

1 APPEARANCES: (Continued)

2 MR. ROBERT JARED
3 106 East 2nd Street,
4 P.O. Box 4350
5 Davenport, IA 52808
6 for MidAmerican Energy Company;

7 SCHIFF, HARDIN & WAITE by
8 MR. OWEN MAC BRIDE
9 7300 Sears Tower
10 Chicago, IL 60606
11 for Illinois Power Company;

12 MR. RONALD JOLLY
13 MR. CONRAD REDDICK
14 30 North LaSalle Street, Suite 900
15 Chicago, IL 60602
16 for the City of Chicago;

17 MR. JOHN FEELEY
18 MR. STEVEN REVETHIS
19 160 North LaSalle Street, Suite C-800
20 Chicago, IL 60601
21 for the staff;

22 MR. MARK KAMINSKI
MS. JANICE DALE
MR. RANDOLPH CLARK
100 West Randolph Street,
Chicago, IL 60601
for the People of the
State of Illinois;

MR. MARK L. GOLDSTEIN
3710 Commercial
Northbrook, IL 60062
for The Liberty Consulting Group;

1 APPEARANCES: (Continued)

2 MS. LEIJUANA DOSS
3 MS. MARIE SPICUZZA
4 MR. MARK PERA
5 69 West Washington, Suite 700
6 Chicago, IL
7 for the People of Cook County;

8
9 GIORDANO & NEILAN by
10 MR. PATRICK GIORDANO
11 333 North Michigan Avenue, Suite 2800
12 Chicago, IL 60603
13 for Trizec Properties, Inc.;

14
15 MR. ERIC ROBERTSON
16 P.O. BOX 735
17 1939 Delmar
18 Granite City, IL 62040
19 for IIEC;

20
21 PIPER RUDNICK by
22 MR. CHRISTOPHER J. TOWNSEND
DAVID I. FEIN
203 North LaSalle, Suite 1500
Chicago, IL 60601
for the ARES Coalition.

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1		<u>I</u> <u>N</u> <u>D</u> <u>E</u> <u>X</u>		
2	<u>Witnesses:</u>	DIRECT CROSS	RE- CROSS	RE- DIRECT EXAM
3	KATHRYN HOUTSMA			
4	MR. RATNASWAMY:	3779		
	MR. KAMINSKI		3782	
5	PAUL CRUMRINE			
6	MR. RIPPE	3796		
7	MR. GIORDANO		3823	
	MR. ROBERTSON		3835	
8	JEROME P. HILL			
9	MR. RATNASWAMY	3838		
10	MR. KAMINSKI		3840	
11	MR. GIORDANO		3861	
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2			
3	Liberty	MARKED	ADMITTED
4	# 1.0	3751	
5	COMED		
6	# 127	3763	
7	COMED		
8	# 100-111, 115, 117		
9	118, 119, 122-125		
	& 127		3766
10	GC		
11	# 9.0	3767	
12	GCI		
13	# 7.0, 8.0 & 9.0		3768
	# 7.1		3769
14	STAFF		
15	# 28.0, 29.0, 30.0		
16	32.0, 33.0 & 34.0		3778
17	COMED		
18	# 110.0		3781
19	COMED		
20	# 113.0 - 113.10,		
	116.0, 116.1 & 121.0		3799
21			
22	IL POWER		
	# 1	3802	3817

1		<u>E</u> <u>X</u> <u>H</u> <u>I</u> <u>B</u> <u>I</u> <u>T</u> <u>S</u>	
2	TRIZEWC		
3	# 100	3825	3832
4	COMED		
5	# 112.0,120.0,114.0		
6	& 126.0		3840
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1 (Whereupon, Liberty
2 Exhibit No. 1.0 was marked
3 for identification.)

4 JUDGE O'CONNELL-DIAZ: Pursuant to the
5 direction of the Illinois Commerce Commission, I
6 now call Docket No. 01-0423, and this is in the
7 matter of Commonwealth Edison Company petition
8 for approval of delivery services tariffs and of
9 residential delivery services implementation plan
10 and for approval of certain other amendments and
11 additions to its rates, terms and conditions.

12 May I have the appearances for the
13 record, please.

14 MR. RIPPPIE: On behalf of the petitioner,
15 Commonwealth Edison Company, Glenn Rippie,
16 R-i-p-p, as in Peter, i-e, and John Ratnaswamy,
17 R-a-t-n-a-s-w-a-m-y, Foley & Lardner, 321 North
18 Clark Street, Chicago, Illinois 60610.

19 MR. BERNET: On behalf of Commonwealth Edison
20 Company, Richard Bernet, B-e-r-n-e-t, Exelon
21 Business Services Company, 10 South Dearborn,
22 Suite 3500, Chicago, Illinois, 60603.

1 MS. POLEK: On behalf of Commonwealth Edison
2 Company, Anastasia Polek, Exelon Business
3 Services, 10 South Dearborn, Chicago.

4 MR. KAMINSKI: Mark Kaminski on behalf of the
5 Illinois Attorney General's Office, 100 West
6 Randolph Street, Chicago, Illinois, 60601 on
7 behalf of the People of the State of Illinois.

8 Sorry. Also Janice Dale and Randolph
9 Clark.

10 MR. REVETHIS: Steven G. Revethis and John C.
11 Feeley, staff counsel appearing on behalf of the
12 Illinois Commerce Commission staff, your Honor,
13 160 North LaSalle, Chicago, Illinois 60601.

14 MR. GUERRA: On behalf of Midwest Generation
15 LLC, Michael Guerra, the law firm of
16 Sonnenschein, Nath & Rosenthal, 8000 Sears Tower,
17 Chicago, Illinois, 60606.

18 MR. MAC BRIDE: Appearing on behalf of the
19 Illinois Power Company, Owen MacBride, 6600 Sears
20 Tower, Chicago, Illinois, 60606.

21 MR. JARED: On behalf of MidAmerican Energy
22 Company, Robert Jared, J-a-r-e-d, 106 East Second

1 Street, Davenport Iowa, 52801.

2 MR. GOLDSTEIN: On behalf of the Liberty
3 Consulting Group, Mark L. Goldstein, 3710
4 Commercial Avenue, Suite 1, Northbrook, Illinois,
5 60062.

6 At this time I would also like to enter
7 the appearance of Daniel Clearfield of Wolf
8 Block, Schorr, Solis & Cohen, LLP, 212 Locust
9 Street, Harrisburg, Pennsylvania. He has filed
10 an appearance in this matter also on behalf of
11 the Liberty Consulting Group.

12 MR. JOLLY: On behalf of the City of Chicago
13 Ronald D. Jolly and Conrad R. Reddick, 30 North
14 LaSalle, Suite 900, Chicago, Illinois, 60602.

15 MS. DOSS: Leijuana Doss, Cook County State's
16 Attorney's Office, 69 West Washington, Suite 700
17 Chicago, Illinois, 60602, appearing on behalf of
18 the people of Cook County.

19 MR. GIORDANO: On behalf of Trizec Properties,
20 Inc., Patrick Giordano, Giordano & Nielan, LTD,
21 333 North Michigan Avenue, Suite 2800, Chicago,
22 Illinois, 60601.

1 MR. ROBERTSON: On behalf of the Illinois
2 Industrial Energy Consumers, Eric Robertson,
3 Leuders, Robertson, Konzen & Fitzhenry, P.O. Box
4 735, 1939 Delmar, Granite City, Illinois, 62040.

5 JUDGE O'CONNELL-DIAZ: Okay.

6 Let the record reflect that this hearing
7 is scheduled for the cross-examination of certain
8 witnesses as well as admission of testimony of
9 other witnesses into the record.

10 I did cause to be circulated a response
11 period for parties to respond to objections to
12 testimony being submitted via affidavit.

13 I did not receive any objections to that
14 request by Commonwealth Edison. Is that correct?
15 Because sometimes things get e-mailed or they go
16 to e-docket and somehow they never get to where
17 they're supposed to go, and I just want to
18 clarify for the record that that is -- there are
19 no objections to that.

20 Okay. There being no objections, since
21 everyone is silent, we will move forward along
22 those lines.

1 Additionally, there was a
2 cross-examination response. It looks as though
3 based on the responses that I received from the
4 parties that there's approximately 2.50, two
5 hours, almost three hours of cross-examination
6 for the witnesses today.

7 Anyone have any objection to that?

8 MR. GIORDANO: Your Honor, we have one short
9 line of questioning for Mr. Crumrine.

10 JUDGE O'CONNELL-DIAZ: Did you --

11 MR. GIORDANO: We did not.

12 JUDGE O'CONNELL-DIAZ: You did not file a
13 response, did you, Mr. Giordano?

14 MR. GIORDANO: No, we did not.

15 JUDGE O'CONNELL-DIAZ: Why am I not surprised?

16 MR. GIORDANO: I think you're not surprised
17 because of all the work that's been going on in
18 these various proceedings. We were involved in
19 the MVI case on Friday and reviewing the
20 testimony over the weekend.

21 JUDGE O'CONNELL-DIAZ: Just giving you a
22 little --

1 MR. GIORGANO: On St. Patrick's Day I can take
2 anything.

3 JUDGE O'CONNELL-DIAZ: How much time do you
4 have?

5 MR. GIORDANO: About ten minutes.

6 JUDGE O'CONNELL-DIAZ: Anybody else? Okay.

7 Also I would note that I think we will
8 talk about at the conclusion of the
9 cross-examination today -- Mr. Kaminski, I did
10 get your phone call Friday afternoon and I had
11 already left the office so I wasn't able to
12 respond to your call.

13 I did receive a response to suggestions
14 concerning post-hearing briefs that's been filed
15 by the company.

16 I believe Mr. Kaminski wanted to comment
17 on that.

18 Is that correct?

19 MR. KAMINSKI: You want me to comment on that
20 now or wait?

21 JUDGE O'CONNELL-DIAZ: I think we can deal
22 with that after we're -- well, actually maybe we

1 should deal with it now so that maybe we can --
2 if there's other suggestions that we might keep
3 those in mind throughout the hearing and then
4 we'd revisit that at the conclusion of the
5 hearing today.

6 Mr. Kaminski.

7 MR. KAMINSKI: Only response we really have is
8 that the proposed schedule from Commonwealth
9 Edison and joint movants, I believe, offered a
10 brief two days after the hearing.

11 That really doesn't seem like a
12 reasonable amount of time for the Attorney
13 General's Office so we would -- given a choice
14 between that and what was set before, we'd rather
15 go with the original schedule.

16 JUDGE O'CONNELL-DIAZ: Well, the original
17 schedule called for no briefs.

18 MR. KAMINSKI: I understand.

19 JUDGE O'CONNELL-DIAZ: Okay. Well, we'll
20 think about that in the next few hours and come
21 back to that issue at the conclusion of the
22 hearings.

1 MR. KAMINSKI: Thank you.

2 MR. REVETHIS: We're going to revisit this

3 after at the close of --

4 JUDGE O'CONNELL-DIAZ: Yes. I just thought if

5 Mr. Kaminski had a different suggestion that it

6 would be best to get that on the record and share

7 it with everyone so that people can be thinking

8 about that.

9 When they're not thinking about their

10 cross-examination they can think about that and

11 then we'll be able to revisit that at the

12 conclusion of the hearings today.

13 MR. REVETHIS: You'll receive comments on that

14 from all parties at the close --

15 JUDGE O'CONNELL-DIAZ: Yes.

16 MR. REVETHIS: -- of cross-examination?

17 JUDGE O'CONNELL-DIAZ: Yes.

18 MR. REVETHIS: Thank you, your Honor.

19 JUDGE O'CONNELL-DIAZ: Does anyone else have

20 an alternative schedule that they were thinking

21 of?

22 MR. REVETHIS: Well, the staff had some

1 thoughts on some movement in the schedule.

2 That's why I made my previous comment.

3 JUDGE O'CONNELL-DIAZ: You want to share those
4 with you us or you want to keep them to yourself?

5 MR. REVETHIS: I'd be happy to.

6 JUDGE O'CONNELL-DIAZ: Why don't you put yours
7 out there and we'll utilize the morning period to
8 keep that in the back recesses of our minds so
9 that we can revisit that at the conclusion of the
10 hearings.

11 MR. REVETHIS: That's fine.

12 Your Honor, given the constraints of the
13 hearing process here, the staff after considering
14 all things in this matter felt that the schedule
15 really doesn't allow for initial briefs as I
16 think the Attorney General gestured.

17 We feel -- and I don't mean to
18 characterize what he said, of course, but we feel
19 if a proposed order could come out on the 19th,
20 then exceptions to the proposed order could be
21 this Friday, the 21st, and replies to exceptions
22 would be the following Tuesday -- next Tuesday,

1 the 25th.

2 And, you know, any Administrative Law
3 Judge proposed order would come out on the 26th
4 giving the Commission -- the Commissioners an
5 additional day in the schedule that's been
6 proposed by the company, by Commonwealth Edison.

7 JUDGE O'CONNELL-DIAZ: So staff is not
8 requesting briefs in this matter?

9 MR. REVETHIS: In order to meet the March 28th
10 deadline, we don't see how that's possible
11 actually.

12 That's why we're, you know, I made the
13 this gesture. If this is to close on the 28th of
14 March for a vote, we don't see how it's possible.

15 JUDGE O'CONNELL-DIAZ: Any other party wish to
16 comment on the schedule?

17 And I would only note that, you know, I
18 would take comments at the end -- at the
19 conclusion of the hearing today, but my directive
20 from the Commission is to go back to them
21 tomorrow and advise them just of the schedules
22 that the parties have mentioned to me this

1 morning as well as the filing by the company. So
2 I will not make an ultimate conclusion for you
3 today.

4 That is what my charge is from the
5 Commission, to go back to them with -- for
6 further scheduling.

7 But that being said, at the conclusion
8 of the hearing I will again ask the parties'
9 input and if parties have an opportunity to speak
10 among themselves and come up with something else
11 that they want me to bring to the Commission, I
12 would appreciate if they would advise me of that
13 at the conclusion. Okay.

14 Any other preliminary matters?

15 MR. KAMINSKI: Actually, Judge, can we go off
16 the record if we want to talk about the schedule
17 of what's going to go further or not.

18 JUDGE O'CONNELL-DIAZ: I thought maybe the
19 parties might have spoken. Let's go off the
20 record.

21 (Whereupon, a discussion was
22 had off the record.)

1 (Whereupon, ComEd
2 Exhibit No. 127 was marked
3 for identification.)
4 JUDGE O'CONNELL-DIAZ: Let's go back on the
5 record.
6 Mr. Rippie, Mr. Bernet, if you would
7 like to proceed.
8 MR. RIPPIE: Your Honor, pursuant to your
9 earlier order, ComEd has filed as Exhibit 127.0
10 the affidavits of the witnesses for whom no
11 cross-examination has been scheduled attesting to
12 their testimony with the attachments referenced
13 therein.
14 The testimony covered by the affidavit
15 includes Exhibit 110 and the attachments thereto,
16 Mr. Frangipane's direct.
17 11 -- I'm sorry -- start again.
18 100, Ms. Juracek's direct.
19 101 and the attachments thereto,
20 Mr. Donohue's direct.
21 102 and attachments thereto,
22 Mr. McDermott's -- Dr. McDermott's direct.

1 103 and attachments thereto,
2 Mr. McDonald's direct.

3 104 and attachments thereto,
4 Mr. Ron Williams' direct. I do note that there
5 is both a public and confidential version of
6 104.0.

7 105, Dr. Kamien's direct and attachments
8 thereto.

9 106, Mr. Jacob's direct and attachments
10 thereto.

11 107, Professor Halpin's direct and
12 attachments thereto. And I note there is a
13 confidential and public version of 107.0 as well.

14 108, Dr. James Williams' direct and
15 attachments thereto. And there is both a
16 confidential and public version of 108.0.

17 109 and attachments thereto, the direct
18 of Mr. Born.

19 111.0 which I mentioned earlier and
20 attachments thereto, the direct of Mr.
21 Frangipane.

22 115.0 and attachments thereto, the

1 supplemental rebuttal, the panel of Mrs. Kelly
2 and Mr. Alongi.

3 117.0, the rebuttal of Dr. McDermott.

4 118.0, the rebuttal of Mr. Ron Williams.

5 119.0 and attachments thereto, the
6 rebuttal of Mr. Born. I note that there is both
7 a confidential and public version of 119.1, the
8 attachment to Mr. Born.

9 122.0, the reply testimony of
10 Dr. McDermott.

11 123.0, the reply testimony of
12 Mr. McDonald.

13 124.0, the reply testimony of
14 Mr. Williams, Jim Williams.

15 125.0, the reply testimony of
16 Mr. Born.

17 Together that constitutes all of the
18 testimony that has been filed on e-docket by the
19 company by witnesses other than those who are
20 scheduled for cross-examination today.

21 I also note that Ms. Juracek's testimony
22 is a corrected version. The affidavit refers to

1 that corrected version. The corrected version
2 has been filed on e-docket.

3 I would ask based on the affidavits
4 attached to Exhibit 127 that those exhibits
5 constituting the testimony I identified and the
6 attachments thereto be admitted.

7 JUDGE O'CONNELL-DIAZ: Any objection to those
8 documents being admitted into evidence?

9 There being no objection, let the record
10 reflect that the documents as noted by Mr. Rippie
11 are admitted into evidence.

12 (Whereupon, ComEd
13 Exhibits 100 through 111,
14 115, 117, 118, 119, 122 through
15 125, and 127 were admitted
16 into evidence.)

17 JUDGE O'CONNELL-DIAZ: Mr. Rippie, does that
18 conclude the testimony that you would like to
19 have admitted in the record in this matter.

20 MR. RIPPIE: No. There are live witnesses.
21 It's my understanding that we were going to do
22 all the affidavit --

1 JUDGE O'CONNELL-DIAZ: That's the affidavit
2 testimony.

3 MR. RIPPIE: Yes, it does.

4 (Whereupon, GC
5 Exhibit No. 9.0 was marked
6 for identification.)

7 JUDGE O'CONNELL-DIAZ: Mr. Kaminski.

8 MR. KAMINSKI: Your Honor, I have before me
9 three exhibits -- I'm sorry, four exhibits to be
10 offered into testimony.

11 There is first the additional direct of
12 David Effron, Exhibit GC 7.0. attached to that
13 is the Exhibit GC 7.1 consisting of schedules.

14 JUDGE O'CONNELL-DIAZ: Is that a separate
15 exhibit?

16 MR. KAMINSKI: No, it is attached. It is just
17 separately numbered.

18 JUDGE O'CONNELL-DIAZ: Okay.

19 MR. KAMINSKI: Also have Exhibit GC 8.0, the
20 rebuttal testimony submitted by David Effron in
21 phase two.

22 Both of these were -- all three of these

1 were for the People of the State of Illinois,
2 City of Chicago, Cook County State's Attorney's
3 Office, and the Citizens Utility Board.

4 Finally, we have provided copies to the
5 court reporter of the affidavit of David J.
6 Effron which has been marked as GC Exhibit 9.0
7 and we will be filing that in e-docket after this
8 hearing.

9 JUDGE O'CONNELL-DIAZ: Any objection to these
10 documented being admitted?

11 MR. RIPPPIE: No.

12 JUDGE O'CONNELL-DIAZ: There being no
13 objection, let the record reflect that as the
14 Government Consumer intervenors are referred
15 throughout the order GCI, GCI Exhibits 7.0, 8.0
16 and 9.0 are admitted into evidence.

17 (Whereupon, GCI
18 Exhibits 7.0, 8.0 and 9.0
19 were admitted into evidence.)

20 MR. KAMINSKI: And 7.1? Is that necessary?

21 JUDGE O'CONNELL-DIAZ: Well, it's an
22 attachment to 7.0. you want to make it a

1 separate exhibit?

2 MR. KAMINSKI: Just to be clear.

3 JUDGE O'CONNELL-DIAZ: Okay. And Exhibit

4 7.1 --

5 MR. KAMINSKI: Thank you.

6 JUDGE O'CONNELL-DIAZ: -- are admitted into
7 evidence.

8 (Whereupon, GCI

9 Exhibit No. 7.1 was admitted

10 into evidence.)

11 JUDGE O'CONNELL-DIAZ: Mr. Goldstein.

12 MR. GOLDSTEIN: Yes, thank you.

13 On behalf of Liberty Consulting Group,
14 the court reporter has marked as Liberty
15 Exhibit 1.0 the direct testimony of John Antonuk.

16 This was the testimony that
17 authenticated the audit report.

18 Liberty Exhibits 2.0 through 2.6 are the
19 rebuttal testimony of John Antonuk and Robert L.
20 Strite from the Liberty Consulting Group. These
21 have been filed electronically.

22 Liberty Exhibit 3.0 is the additional

1 rebuttal testimony of John Antonuk and Dennis M.
2 Kalbarczyk, that's K-a-l-b-a-r-c-z-y-k.

3 There are no other exhibits attached to
4 3.0.

5 Also provided electronically were the
6 vitae of Messrs. Antonuk and Strite, that was
7 part of the 2.0 exhibit. And part of the 3.0
8 exhibit was the vitae for Mr. Kalbarczyk.

9 We do not have affidavits available
10 today, your Honor. We would ask that with
11 respect to Liberty Exhibits 2.0 and 3.0 we would
12 late file the Exhibits 4.0 and 5.0 respectively
13 with the affidavits of the aforementioned
14 persons.

15 If your Honor wishes, we could also
16 provide an affidavit with respect to 1.0 but as
17 your Honor may recall, there was an
18 authentication on the back end of that exhibit
19 and I don't know if that will suffice for the
20 purposes of this proceeding.

21 JUDGE O'CONNELL-DIAZ: Any objection to those
22 documents being admitted?

1 MR. KAMINSKI: Your Honor, I have no
2 objection. I just want to confirm that Liberty
3 1.0 had as an attachment the audit report?
4 Correct?

5 MR. GOLDSTEIN: The audit report was not
6 attached to 1.0. It's in the process of being
7 filed electronically.

8 We have had some problem trying to
9 determine what is proprietary, what is not
10 proprietary.

11 And if your Honor will recall, it took
12 until last Wednesday to finally determine the
13 petitions for interlocutory review to which would
14 have perhaps changed the filing.

15 But that is in the process of being
16 filed and may actually be filed today.

17 MR. KAMINSKI: My only request is that
18 according to the order in 01-0664, it was
19 supposed -- the actual report was supposed to be
20 entered into the evidentiary record.

21 I just want to make sure that happens in
22 someplace.

1 MR. GOLDSTEIN: If your Honor wishes we can
2 provide those as exhibits electronically.

3 JUDGE O'CONNELL-DIAZ: Should we provide a
4 separate exhibit number for that?

5 MR. GOLDSTEIN: Perhaps.

6 JUDGE O'CONNELL-DIAZ: As a late filed
7 Exhibit 6.0.

8 MR. GOLDSTEIN: 6.0 would be fine. And it
9 will appear both in proprietary and
10 nonproprietary.

11 I guess I should mention that some of
12 the appendices with respect to 2.0 are going --
13 have been filed both in proprietary and
14 non-proprietary fashion.

15 JUDGE O'CONNELL-DIAZ: Counsel, you will note
16 that for the record when they are filed?

17 MR. GOLDSTEIN: Yes. That has already been
18 noted.

19 JUDGE O'CONNELL-DIAZ: Okay. Then I would add
20 to the list, thanks to Mr. Kaminski, Exhibit 6.0
21 which will be a late filed exhibit as well as 5.0
22 and 4.0.

1 And there are no objections to these
2 documents being admitted?

3 MR. RIPPIE: None.

4 MR. KAMINSKI: Before -- your Honor, just one
5 more question.

6 According to the ruling of last
7 Wednesday I believe that there is going to be a
8 proprietary and nonproprietary 6.0, so it would
9 be both?

10 JUDGE O'CONNELL-DIAZ: Yes.

11 MR. KAMINSKI: Okay. Thank you.

12 JUDGE O'CONNELL-DIAZ: Mr. Townsend, you just
13 joined us.

14 Would you like to file your appearance?

15 MR. TOWNSEND: If I may.

16 On behalf of the ARES Coalition, law
17 firm of Piper Rudnick, 203 North LaSalle, Suite
18 1500, 60601, by Christopher J. Townsend and David
19 I. Fein.

20 Thank you, your Honor.

21 JUDGE O'CONNELL-DIAZ: Mr. Feeley.

22 MR. FEELEY: Sure.

1 Staff is in the process of filing
2 through e-docket seven affidavits.

3 First affidavit is Bryan C. Sant. It
4 concerns his initial testimony responding to
5 audit. It's marked for identification as ICC
6 Staff Exhibit 28.0. has attached Schedules 28.1
7 through 28.6.

8 Second affidavit is another affidavit of
9 Mr. Sant. It addresses his rebuttal testimony
10 responding to audit. The testimony is marked for
11 identification as Staff Exhibit 30.0 and attached
12 Schedules 30.1 through 30.7.

13 The third affidavit is from Mike Luth.
14 It address initial testimony responding to audit
15 of Mike Luth. It's marked for identification as
16 Staff Exhibit 29.0, has one attached schedule.

17 Next affidavit is also for Mr. Mike
18 Luth. Concerns his rebuttal testimony responding
19 to audit. That's marked for identification as
20 Staff Exhibit 34.0. it has one attached
21 schedule.

22 Next affidavit is from Scott A. Struck.

1 It addresses his rebuttal testimony responding to
2 audit. That's marked for identification as Staff
3 Exhibit 31.0, has five attached schedules, 31.1
4 through 31.5.

5 The next affidavit is from Burma C.
6 Jones. It's rebuttal testimony. It concerns her
7 rebuttal testimony responding to audit. It's
8 marked for identification as ICC Staff Exhibit
9 32.0. there's no attached schedules or
10 attachments.

11 Our last affidavit is from Bruce A.
12 Larson, concerns the rebuttal testimony
13 responding to audit of Mr. Larson. This
14 testimony is marked for identification as Staff
15 Exhibit 33.0, has two attachments, 33.1 and 33.2.

16 And those are being -- again, are being
17 filed, e-docketed at this moment.

18 JUDGE O'CONNELL-DIAZ: Mr. Feeley, just to
19 clarify for me, Mr. Larson's testimony is Exhibit
20 33.0.

21 MR. FEELEY: 33.0, and it has two attachments,
22 33.1 and 33.2.

1 JUDGE O'CONNELL-DIAZ: Thank you.

2 MR. FEELEY: I guess I have just one minor
3 procedural matter.

4 We had filed a motion to withdraw
5 testimony of Mr. Sant and Mr. Luth because we had
6 duplicated an exhibit number and we had filed
7 that motion and we had just requested that those
8 documents that were first filed on e-docket be
9 removed from the system so that there's no
10 confusion to the parties and the corrected
11 exhibit numbers were put on their testimony now
12 and I also filed it on e-docket previously.

13 JUDGE O'CONNELL-DIAZ: Mr. Feeley, I believe I
14 have effectuated a request to the chief judge to
15 prepare the proper documentation for removal of
16 those documents from e-docket based upon the
17 incorrect numbering.

18 MR. FEELEY: Thank you.

19 JUDGE O'CONNELL-DIAZ: Any objection to Staff
20 Exhibits 28.0, 30.0, the direct and rebuttal
21 testimony with attachments of Mr. Bryan Sant
22 being admitted into evidence?

1 MR. RIPPIE: No.

2 JUDGE O'CONNELL-DIAZ: Any objection to Staff

3 Exhibit 29.0 or 34.0, the direct and rebuttal

4 testimony of Mr. Luth being admitted into

5 evidence?

6 Any objection to Staff Exhibits 31.0 and

7 32.0 with the corresponding attachments, this is

8 the direct and rebuttal testimony of Mr. Scott

9 Struck?

10 MR. FEELEY: Point of clarification, Mr.

11 Struck just has one exhibit, 31.0.

12 JUDGE O'CONNELL-DIAZ: I'm sorry.

13 MR. FEELEY: 32.0 is Burma C Jones' testimony.

14 JUDGE O'CONNELL-DIAZ: Glad I read that back.

15 Any objection to Mr. Struck's testimony

16 which has been marked Staff Exhibit 31.0 being

17 admitted?

18 With regard to Ms. Jones' testimony

19 which has been marked 32.0 being admitted, any

20 objections?

21 And Mr. Larson's testimony, 33.0, Staff

22 Exhibit, any objections to that?

1 And, Mr. Feeley, the affidavits are
2 currently being filed or attached? They're not
3 attached to the testimony?

4 MR. FEELEY: Well, they're -- the way they're
5 being filed in e-docket now, we don't have them
6 set up as an exhibit. The way they're worded
7 says if they were attached to this testimony.

8 JUDGE O'CONNELL-DIAZ: Okay. Let the record
9 reflect that the documents as I just enumerated
10 are admitted into evidence.

11 And as noted, the motion to withdraw has
12 been -- documentation has been prepared to remove
13 that from e-docket.

14 (Whereupon, Staff
15 Exhibits 28.0, 29.0, 30.0,
16 32.0, 33.0 and 34.0 were
17 admitted into evidence.)

18 JUDGE O'CONNELL-DIAZ: Does that conclude all
19 the testimony that needs to be submitted via
20 affidavit this morning?

21 Okay. Moving right along.

22 Mr. Rippie.

1 MR. RIPPIE: Would you like to swear all three
2 of the company's witnesses at the same time?

3 JUDGE O'CONNELL-DIAZ: No, they can come up
4 and take their seat.

5 MR. RIPPIE: The first witness is Ms. Kathryn
6 Houtsma.

7 THE WITNESS: Good morning.

8 JUDGE O'CONNELL-DIAZ: Ms. Houtsma, if you
9 would raise your right hand.

10 (Witness sworn.)

11 KATHRYN HOUTSMA,
12 having been called as a witness herein, after
13 having been first duly sworn, was examined and
14 testified as follows:

15 DIRECT EXAMINATION

16 BY

17 MR. RATNASWAMY:

18 Q. Would you please state your name for the
19 record.

20 JUDGE O'CONNELL-DIAZ: Mr. Ratnaswamy, you're
21 going to have to speak into the microphone
22 because I want to hear everything you have to

1 say.

2 THE WITNESS: Kathryn M. Houtsma.

3 BY MR. RATNASWAMY:

4 Q. Would you please state your business
5 address.

6 A. Three Lincoln Center, Oakbrook Terrace,
7 Illinois.

8 Q. By whom are you employed?

9 A. Commonwealth Edison.

10 Q. In what capacity are you employed?

11 A. Vice president of finance.

12 Q. Did you prepare or cause to be prepared
13 the phase two direct testimony of Kathryn M.
14 Houtsma, CPA, in this docket?

15 A. Yes.

16 Q. And if I were to ask you the questions
17 contained in that direct testimony, would your
18 answers be the same today as they are set forth
19 there?

20 A. Yes.

21 Q. Is it your intention to offer that as your
22 direct testimony in this phase two of this

1 proceeding including the attachments thereto?

2 A. Yes.

3 MR. RATNASWAMY: Your Honor, subject to the
4 right of cross-examination, I would offer ComEd
5 Exhibit 110.0, the phase two direct testimony of
6 Kathryn M. Houtsma, CPA, including the
7 attachments thereto.

8 JUDGE O'CONNELL-DIAZ: Any objection to that
9 document subject to cross-examination being
10 admitted into the record?

11 There being no objection let the record
12 reflect that ComEd Exhibit 110.0 is admitted into
13 evidence.

14 (Whereupon, ComEd
15 Exhibit 110.0 was admitted
16 into evidence subject to
17 cross-examination.)

18 MR. RATNASWAMY: I would tender the witness
19 for cross-examination.

20 JUDGE O'CONNELL-DIAZ: Mr. Kaminski.

21 MR. KAMINSKI: Thank you.

22

1 CROSS-EXAMINATION

2 BY

3 MR. KAMINSKI:

4 BY MR. KAMINSKI:

5 Q. Ms. Houtsma, the interim order disallowed
6 over 400 million of ComEd's general plant and
7 intangible plant and over \$60 million of ComEd's
8 AG -- A&G expenses based on staff's labor
9 allocator, correct?

10 A. That's correct.

11 Q. Please refer to Page 40 of the interim
12 order.

13 A. Okay.

14 Q. Specifically the Commission analysis and
15 conclusion section.

16 The first sentence of that section
17 states the Commission finds that where
18 functionalization is required, comma, a general
19 labor allocator is more reasonable and more
20 equitable than a direct assignment approach in
21 this proceeding, unquote.

22 Correct?

1 A. That's what it says, yes, correct.

2 Q. Thank you.

3 And the third paragraph of that section
4 states, for purposes of this interim order,
5 comma, however, comma, the Commission need not
6 finally resolve this issue, period.

7 Commission recognizes the other parties
8 have advocated different labor allocator
9 calculations, but the Commission concludes that
10 the use of staff's calculation for this purpose
11 is appropriate, unquote.

12 Correct?

13 A. That's correct. That's what the order
14 says.

15 Q. Does the third paragraph mention direct
16 assignment approaches?

17 A. It references different labor allocators.
18 It doesn't specifically reference the word direct
19 assignment.

20 Q. Thank you.

21 And references to different labor
22 allocators after stating the Commission need not

1 finally resolve this issue, correct?

2 A. I'm sorry, can you repeat the question?

3 Q. The third paragraph only refers to
4 different labor allocator calculations after
5 stating the Commission need not finally resolve
6 this issue, correct?

7 A. That's correct.

8 Q. And the interim order disallowed the over
9 \$400 million of ComEd's general intangible plant
10 based on its reasoning on Page 40, correct?

11 A. That's my -- that's my understanding.

12 Q. Could you refer to Exhibit 114.1. That is
13 the exhibit -- that is the attachment to
14 Mr. Hill's testimony.

15 I understand it's not in the record.
16 How would you like me to refer to that because it
17 hasn't been admitted yet?

18 JUDGE O'CONNELL-DIAZ: Well, I think you can
19 refer to it as his testimony that's --

20 MR. KAMINSKI: Prefiled?

21 JUDGE O'CONNELL-DIAZ: -- prefiled.

22 MR. KAMINSKI: Okay.

1 BY MR. KAMINSKI:

2 Q. Specifically could you look at Appendix A,
3 Page 8. This page refers to rate base
4 adjustments, right?

5 JUDGE O'CONNELL-DIAZ: Mr. Kaminski, just so
6 we're clear for the record, what is she looking
7 at?

8 MR. KAMINSKI: I'm sorry, this is ComEd
9 Exhibit 114.1, Appendix A, Page 8 of 14 which is
10 an attachment to Mr. Hill's supplemental rebuttal
11 testimony.

12 THE WITNESS: The schedule includes a ComEd
13 proforma rate base and adjustments and then a
14 final order rate base.

15 BY MR. KAMINSKI:

16 Q. Thank you.

17 Under the adjustments Column C for
18 Line 2, general intangible plant, there's a
19 downward adjustment of \$403,760,000, correct?

20 A. Correct.

21 Q. This 403 million reflects the labor
22 allocator adjustment approved by the interim

1 order that you referred to on Page 3 of your
2 direct testimony, correct?

3 A. That's correct.

4 Q. Thank you.

5 Could you now please refer to ComEd
6 Exhibit 114.1, Appendix A, Page 1?

7 JUDGE O'CONNELL-DIAZ: Just so the record is
8 clear, this is still Mr. Hill's supplemental
9 testimony?

10 MR. KAMINSKI: Attachment, yes.

11 BY MR. KAMINSKI:

12 Q. At the same time, could you also look at
13 Appendix A, revised Schedule 1 to the interim
14 order?

15 MR. RATNASWAMY: Do you have an extra copy
16 handy?

17 MR. KAMINSKI: I have a copy.

18 May I approach the witness?

19 JUDGE O'CONNELL-DIAZ: Yes.

20 BY MR. KAMINSKI:

21 Q. And both of these pages refer to
22 adjustments to expenses, correct?

1 A. That's correct.

2 Q. Please compare administrative and general
3 figures under Column F in both of these tables.

4 A. Would you like me to read both columns?

5 Q. No. No. I just wanted you to compare
6 them.

7 What is the difference between those
8 figures?

9 JUDGE O'CONNELL-DIAZ: Mr. Kaminski, so the
10 record is clear, what figures is she looking at?

11 MR. KAMINSKI: She's comparing the figures
12 that compare the administrative and general under
13 Column F of both charts.

14 Both charts have a Column F and there is
15 a corresponding row for administrative and
16 general expense.

17 JUDGE O'CONNELL-DIAZ: Just trying to make it
18 clear for the record so when we look at it we
19 know what you're talking about.

20 MR. KAMINSKI: Thank you.

21 MR. RATNASWAMY: So the record is clear, when
22 you say what is the difference, you just mean the

1 numerical difference?

2 MR. KAMINSKI: Correct.

3 THE WITNESS: Well, in total, Appendix A
4 revised has total operating expenses before
5 income taxes of \$1,137,870,000; whereas Appendix
6 A has total operating expenses before income
7 taxes of \$1,123,379,000, so there's a difference
8 of roughly 14 million.

9 BY MR. KAMINSKI:

10 Q. I'm sorry, I was directing you to the line
11 marked administrative and general.

12 A. Oh, I'm sorry.

13 Administrative and general expenses on
14 Appendix A revised are 118,153,000. On Appendix
15 A, administrative and general expenses are
16 180,213,000.

17 Q. So the difference would be a little over
18 61 million?

19 A. Correct.

20 Q. And the administrative and general expense
21 proposed by ComEd and the movants as shown in
22 Exhibit 114.1 is over \$61 million above the

1 figure approved by the interim order, correct?

2 A. I think that's what we just went -- the
3 math we just went through, yeah.

4 Q. I'm just confirming.

5 A. That's correct.

6 Q. This over \$61 million increase over the
7 interim order's findings reflects ComEd's and the
8 movants' position that the Commission should
9 disregard the labor allocator adopted by the
10 interim order for administrative and general
11 expense, correct?

12 MR. RATNASWAMY: Your Honor, I'm going to
13 object. We have been being quite a long while
14 down this line of Ms. Houtsma being examined on
15 an exhibit of Mr. Hill.

16 She has only filed direct in this case.
17 I believe it was filed on February 3rd. She
18 doesn't address anywhere therein the motion, the
19 proposed order, the position of the movants, so I
20 think it is well beyond the proper scope of
21 cross-examination.

22 MR. KAMINSKI: Your Honor, if you allow me,

1 the direct testimony filed in phase two states --
2 can I quote here?

3 Paragraphs -- in --

4 JUDGE O'CONNELL-DIAZ: Are you talking about
5 Mr. Hill's testimony?

6 MR. KAMINSKI: No, I'm talking about
7 Mrs. Houtsma's testimony, Exhibit 110.0, Page 3,
8 at lines 57 through 62, states that the interim
9 order, parens., inconsistently, end parens.,
10 disallowed over 400 million of ComEd's general
11 plant and intangible plants, comma, and over 60
12 million of ComEd's A&G expenses based on staff's
13 across-the-board modified general labor
14 allocator.

15 That was the stance Ms. Houtsma took in
16 her direct testimony.

17 I'm allowed to compare that against what
18 we're addressing today.

19 MR. RATNASWAMY: Well, at this point I don't
20 remember what the question pending is, but I
21 think she was asked a question about the position
22 of the movants.

1 I'm not sure there's a foundation for
2 that.

3 JUDGE O'CONNELL-DIAZ: Mr. Kaminski, could you
4 restate your question?

5 BY MR. KAMINSKI:

6 Q. I asked is the \$61 million increase over
7 the interim order's finding reflect ComEd and
8 movants' position that the Commission should
9 disregard the labor allocator adopted by the
10 interim order for administrative and general
11 expense.

12 MR. RATNASWAMY: I would make my objection
13 foundation then. I don't know that it's been
14 established that she has any knowledge what the
15 proposed order or the motion provides for.

16 JUDGE O'CONNELL-DIAZ: Mr. Kaminski, you want
17 to lay a foundation?

18 BY MR. KAMINSKI:

19 Q. Ms. Houtsma -- may I re-ask the question?
20 Thank you.

21 This over \$61 million increase over the
22 interim order's findings reflects ComEd's

1 position that the Commission should disregard the
2 labor allocator adopted by the interim order for
3 administrative and general expense, correct?

4 A. Well, Appendix A does not adopt the labor
5 allocator adjustment that is contained in the
6 interim order.

7 Q. Would you agree that the over 61 million
8 increase over the interim order's findings
9 reflected in ComEd's attachment -- the attachment
10 to

11 Mr. Hill's testimony, 114.1, reflects the
12 position -- the ComEd's position that the
13 Commission should disregard the labor allocator
14 adopted by the interim order in administrative
15 and general expense?

16 A. Yes.

17 Q. Thank you.

18 And the interim order applied the -- the
19 interim order applied the labor allocator to both
20 the administrative and general expense and the
21 general and intangible plant, correct?

22 A. That's correct.

1 Q. The proposed revenue requirement for this
2 case reflects the 403 million decrease in general
3 and intangible rate base or general and
4 intangible plant generated by the application of
5 the labor allocator adopted by the interim order,
6 correct?

7 A. That's correct.

8 Q. And ComEd proposes the Commission to
9 ignore the interim order and approve all of the
10 administrative and general plant disallowed by
11 the interim order's application of the general
12 labor allocator, correct?

13 MR. RATNASWAMY: I'm sorry, could you clarify
14 which proposal are you talking about?

15 BY MR. KAMINSKI:

16 Q. The proposal as reflected in the
17 attachment to Mr. Hill's testimony, 114.1,
18 specifically Appendix A, Page 1.

19 MR. RATNASWAMY: Do you remember the question?

20 THE WITNESS: Can you repeat the question?

21 MR. KAMINSKI: Certainly.

22 BY MR. KAMINSKI:

1 Q. ComEd proposes the Commission ignore the
2 interim order and approve all of the
3 administrative and general plant disallowed by
4 the interim order's application of the labor
5 allocator, correct?

6 MR. RATNASWAMY: Mr. Kaminski, you said
7 administrative and general plant and I doubt
8 that's what you meant.

9 MR. KAMINSKI: I'm sorry. I meant the
10 administrative and general expense.

11 THE WITNESS: I don't know if I would use the
12 term ignore. It accepts a different position
13 than the interim order.

14 MR. KAMINSKI: Thank you. That's all I have.

15 JUDGE O'CONNELL-DIAZ: I believe that's all
16 the cross we have for Ms. Houtsma.

17 Mr. Giordano, since you didn't get your
18 schedule in, I'm asking you, do you have any
19 cross for this witness?

20 MR. GIORDANO: No, I don't. Thank you.

21 JUDGE O'CONNELL-DIAZ: Okay. Ms. Houtsma,
22 thank you very much. You're excused.

1 THE WITNESS: Thank you.

2 JUDGE O'CONNELL-DIAZ: We can take a five

3 minute break in between witnesses.

4 I believe Mr. Hill is up next.

5 MR. RIPPIE: Mr. Crumrine.

6 JUDGE O'CONNELL-DIAZ: Mr. Crumrine, okay.

7 (Whereupon, a brief recess

8 was taken.)

9 JUDGE O'CONNELL-DIAZ: Back on the record.

10 Mr. Rippie.

11 MR. RIPPIE: Your Honor, I don't know if the

12 record reflects the admission of Ms. Houtsma's

13 testimony and the exhibits thereto.

14 If not, I'd offer them into evidence.

15 JUDGE O'CONNELL-DIAZ: Just in case we haven't

16 covered that ground, is there any objection to

17 Ms. Houtsma's testimony being admitted into

18 evidence?

19 There being no objection, let the record

20 reflect that Exhibit 110.0, the testimony of

21 Ms. Houtsma is admitted into evidence.

22 I do believe it was because I remember

1 saying those numbers, but better safe than sorry.

2 Mr. Rippie.

3 MR. RIPPIE: Your Honor, the company's next
4 witness is Mr. Paul Crumrine.

5 Mr. Crumrine is here next to me.

6 (Witness sworn.)

7 PAUL CRUMRINE,
8 having been called as a witness herein, after
9 having been first duly sworn, was examined and
10 testified as follows:

11 DIRECT EXAMINATION

12 BY

13 MR. RIPPIE:

14 Q. Mr. Crumrine, I direct your attention to a
15 document that's been previously marked
16 Commonwealth Edison Exhibit 113.0 together with
17 ten attachments, 113.1 through 113.10.

18 Are you familiar with those documents?

19 A. Yes, I am.

20 Q. Are those documents a copy of your direct
21 testimony for submission to the Illinois Commerce
22 Commission in this docket together with the

1 attachments thereto?

2 A. For phase two, yes.

3 Q. And would you have any additions or
4 corrections to make to any of those documents?

5 A. No.

6 Q. Direct your attention to Exhibit 116.0,
7 which has been previously filed on e-docket
8 together with the single attachment thereto
9 denominated 116.1.

10 Is 116.0 and 116.1 your rebuttal
11 testimony for submission to the Illinois Commerce
12 Commission in this docket?

13 A. Yes, it is.

14 Q. Are there any additions or corrections you
15 wish to make to Exhibit 116.0 or 1?

16 A. No.

17 Q. Now direct your attention to the document
18 that's been previously marked Exhibit 121.0.

19 Is that your prefiled reply testimony
20 that has been placed on e-docket for submission
21 to the Illinois Commerce Commission in this
22 docket?

1 A. Yes, it is.

2 Q. Are there any additions or corrections you
3 wish to make to Exhibit 121.0?

4 A. No.

5 Q. Mr. Crumrine, if I asked the questions
6 that appear on Exhibits 113 and attachments
7 thereto, 116 and attachments thereto, and 121,
8 would you have the same answers that appear in
9 those documents?

10 A. Yes, I would.

11 MR. RIPPPIE: Thank you very much.

12 Your Honor, at this time I would offer
13 Exhibits 113.0 through 113.10, 116.0, 116.1 and
14 121.0 into evidence.

15 JUDGE O'CONNELL-DIAZ: Any objections subject
16 to cross-examination of those documents being
17 admitted into evidence?

18 There being no objection, let the record
19 reflect that those documents are admitted into
20 evidence.

21

22

1 (Whereupon, ComEd
2 Exhibit 113.0 through 113.10,
3 116.0, 116.1 and 121.0
4 were admitted into evidence
5 subject to cross-examination.)
6 MR. RIPPPIE: Witness is available for cross.
7 JUDGE O'CONNELL-DIAZ: Mr. MacBride.
8 MR. MAC BRIDE: Thank you. I have some cross.
9 CROSS-EXAMINATION
10 BY
11 MR. MAC BRIDE:
12 Q. Good morning, Mr. Crumrine?
13 A. Good morning, Mr. MacBride.
14 Q. Would you refer to your phase two ComEd
15 Exhibit 121.0, please, and refer specifically to
16 Page 3, Line 62 to 70.
17 Are you there?
18 A. Yes, I am.
19 Q. Do you there refer to a motion of
20 Commonwealth Edison and attached proposed order
21 that was filed on March 5, 2003, in this docket?
22 A. Yes.

1 Q. Are you generally familiar with that
2 motion and that proposed order?

3 A. Yes.

4 Q. Were the March 5 motion of Commonwealth
5 Edison and the March 5 proposed order supported
6 by a number of other parties to this proceeding?

7 A. Yes, it is.

8 Q. Did those parties include the Citizens
9 Utility Board, City of Chicago, Cook County
10 State's Attorney's Office, AES New Energy, BOMA,
11 Trizec Properties, Blackhawk Energy, MidAmerican
12 Energy, Nicor Energy LLC, Central Illinois Light
13 Company, the National Energy Marketers
14 Association, and Peoples Energy Services
15 Corporation?

16 A. Other than AES New Energy is now called
17 Constellation New Energy, and without having the
18 specific list in front of me, that generally
19 sounds like the people that were or the entities
20 that were involved, yes.

21 Q. Mr. Crumrine, did the filing of the
22 March 5 motion and the March 5 proposed order

1 come about as the result of a certain agreement
2 regarding various matters involving or affecting
3 rates for electric service offered by
4 Commonwealth Edison Company dated as of March 3,
5 2003?

6 A. Yes.

7 Q. Are you generally familiar with the
8 existence of that agreement?

9 A. Yes, I am.

10 Q. Was that agreement entered into between
11 Commonwealth Edison and the following entities:
12 Trizec Properties, Inc., the Citizens
13 Utility Board, the City of Chicago, MidAmerican
14 Energy, the Illinois Retail Merchants
15 Association, Constellation New Energy, the
16 Illinois Manufacturers Association, the National
17 Energy Marketers Association, Peoples Energy
18 Service Corporation, the Cook County State's
19 Attorney's Office, and the RES Coalition?

20 A. That sounds correct.

21 MR. MAC BRIDE: Judge, I'd like the reporter
22 to mark this document for identification as

1 Illinois Power Exhibit 1.

2 For the record, I have copies of this
3 exhibit in these boxes here for any other parties
4 here who would like to have copies.

5 (Whereupon, Illinois Power
6 Exhibit No. 1 was marked
7 for identification.)

8 BY MR. MAC BRIDE:

9 Q. Mr. Crumrine, I'd like you to look at the
10 document that the reporter has marked for
11 identification as Illinois Power Exhibit 1.

12 Is this document a copy of the agreement
13 regarding various matters involving or affecting
14 rates for electric service offered by
15 Commonwealth Edison Company dated as of March 3,
16 2003, among Commonwealth Edison and the other
17 parties we just identified?

18 A. Yes, it looks like it.

19 Q. This agreement has a number of exhibits to
20 it, correct?

21 A. Yes, it does.

22 Q. Now, first would you look at Page 34 of

1 the agreement itself.

2 Are you there?

3 A. Yes.

4 Q. Has this agreement been signed by
5 representatives of Commonwealth Edison and all
6 the other parties we previously identified?

7 A. I believe so.

8 Q. And who signed on behalf of Commonwealth
9 Edison?

10 A. Its president Frank Clark.

11 Q. You recognize his signature on Page 34 as
12 Mr. Clark's signature?

13 A. Yes, I do.

14 Q. That's the signature that he uses to
15 approve your budget request every year?

16 A. I have seen his signature frequently.

17 Q. For the record, we previously identified
18 the RES Coalition as one of the parties to this
19 agreement; is that correct?

20 A. Yes.

21 Q. And does the RES Coalition consist of
22 MidAmerican Energy Company, Ameren Energy

1 Marketing, Blackhawk Energy Services,
2 Constellation New Energy, Central Illinois Light
3 Company, Nicor Energy LLC, and Peoples Energy
4 Service Corporation?

5 A. Yes. That's what the document represents.

6 Q. Now, as we indicated the document,
7 Illinois Power Exhibit 1, also has a number of
8 exhibits, correct?

9 A. Correct.

10 Q. And specifically there are tags for
11 Exhibits A through S; is that correct?

12 A. That's correct.

13 Q. However, there is actually no Exhibit C
14 and no Exhibit Q, correct?

15 A. That is correct.

16 Q. Those are shown in the document as having
17 been intentionally omitted, correct?

18 A. Yes, but it's my understanding that there
19 was some mislabeling during the development of
20 the agreement and there actually isn't and never
21 was an Exhibit C or Q.

22 Q. Okay. And is it your understanding that

1 Exhibits A, B, D through P, R and S are all
2 exhibits to the agreement among Commonwealth
3 Edison and the other parties?

4 A. Yes.

5 Q. In some of these exhibits are documents
6 specifically relating to this docket, correct?

7 A. Yes, it is.

8 Q. For example, Exhibit J is the March 5
9 motion filed by Commonwealth Edison in this
10 docket, correct?

11 A. Yes, it is.

12 Q. Exhibit K is Mr. Hill's supplemental
13 rebuttal testimony, ComEd 11 -- ComEd Exhibit
14 114.0?

15 A. Yes.

16 Q. And Exhibit L is phase two supplemental
17 rebuttal panel testimony of Mr. Alongi and
18 Ms. Kelly, correct?

19 A. Correct.

20 Q. And Exhibit M is the form of proposed
21 order that was filed on March 5, correct?

22 A. Yes.

1 Q. Exhibit N is a form of stipulation of
2 several parties to this docket to support the
3 March 5 motion and the March 5 proposed order,
4 correct?

5 A. Correct.

6 Q. And the Exhibit O contains conditional
7 withdrawals of certain testimony in this docket
8 by BOMA, Peoples Energy Service Corporation,
9 National Energy Marketers Association, the ARES
10 Coalition and TrizecHahn, correct?

11 A. Yes, that's correct.

12 Q. Now, if you'll flip to the very back of
13 the exhibit, Illinois Power Exhibit 1, Mr.
14 Crumrine, you see there are three documents
15 clipped to the back of the bound volume.

16 Do you see those?

17 A. Yes, I do.

18 Q. One of those documents is a memorandum of
19 understanding dated as of March 3, 2003, among
20 Commonwealth Edison, the Citizens Utility Board,
21 the City of Chicago and the Cook County State's
22 Attorney's Office, correct?

1 A. Correct.

2 Q. And there's also clipped to the back of
3 the exhibit a second memorandum of understanding
4 dated as of March 3, 2003, among Commonwealth
5 Edison, Peoples Energy Services Corporation,
6 Trizec Properties, Inc., the Illinois Retail
7 Merchants Association, Constellation New Energy,
8 the RES Coalition, the Illinois Manufacturers
9 Association, the National Energy Marketers
10 Association, and BOMA, correct?

11 A. Yes, that's correct.

12 Q. And the copies of these two memoranda of
13 understanding that are included in Illinois Power
14 Exhibit 1 have been signed by all those parties,
15 correct?

16 A. Yes, it has or they both have.

17 Q. These two memoranda of understanding
18 relate generally to agreements to forebear from
19 taking or supporting certain legislative actions,
20 correct?

21 A. Yes, that's correct.

22 Q. And is it your understanding that these

1 two memoranda of understanding relate to the
2 subject matter of the main agreement?

3 A. Yes, it is.

4 Q. Finally, also clipped to the back of
5 Illinois Power Exhibit 1 is a document that's
6 labeled amendment dated as of March 10, 2003, to
7 agreement regarding various matters involving or
8 affecting rates for electric service offered by
9 Commonwealth Edison Company dated as of March 3,
10 2003; is that correct?

11 A. Yes, it is.

12 Q. And who are the parties to this amendment?

13 A. Based on my copy of the signature pages,
14 the parties are Commonwealth Edison Company,
15 MidAmerican Energy Company, Cook County State's
16 Attorney's, Building Owners and Managers
17 Association, Peoples Energy Services, City of
18 Chicago, Constellation New Energy, Illinois
19 Manufacturers Association, National Energy
20 Marketers, the RES Coalition, Citizens Utility
21 Board, Trizec Properties, Inc., and the Illinois
22 Retail Merchants Association.

1 Q. The purpose of the amendment dated as of
2 March 10, 2003, was to change and extend certain
3 dates that are stated in the main agreement,
4 correct?

5 A. That's correct.

6 MR. MAC BRIDE: Judge, at this time I would
7 offer into evidence Illinois Power Exhibit 1
8 consisting of the agreement regarding various
9 matters involving or affecting rates for electric
10 service offered by Commonwealth Edison Company
11 dated as of March 3, 2003, Exhibits A through S
12 thereto of which Exhibits C and Q are blank, and
13 the two memoranda of understanding among
14 Commonwealth Edison and certain other parties as
15 identified by Mr. Crumrine, and finally the
16 amendment to the agreement dated as of March 10,
17 2003.

18 Those are all included in Illinois Power
19 Exhibit 1.

20 MR. RIPPIE: Your Honor, to make ComEd's
21 position clear, it is our view that these
22 documents are not relevant to the determination

1 that the Commission is being asked to make.

2 We are not asking the Commission to
3 approve the agreements, and we are not asking the
4 Commission to make any finding or ruling based on
5 the existence of the agreements or any terms
6 thereof.

7 Rather, we have asked that the order be
8 entered based on the evidence in the record.

9 However, the company understands the
10 parties' interest in the context in which this
11 agreement is entered. And ComEd and the joint
12 movants have nothing to hide in that respect.

13 So with the understanding that I have
14 just given, the company will not pursue that
15 relevance objection to the admission of this
16 document.

17 JUDGE O'CONNELL-DIAZ: Mr. Robertson.

18 MR. ROBERTSON: I don't think I have an
19 objection but I'd like counsel to explain the
20 purpose and relevance of the agreement so I can
21 determine whether or not I do have an objection.

22 MR. MAC BRIDE: Well, as Mr. Crumrine

1 indicated, certain filings in this docket came
2 about as a result of the agreement that's
3 reflected in Illinois Power Exhibit 1, so -- and
4 as Mr. Rippie indicated, I think it's appropriate
5 to place this exhibit into the record to show the
6 context in which certain filings relating to the
7 proposed resolution in this case came about.

8 MR. ROBERTSON: Thank you.

9 MS. DOSS: I have a question for the
10 memorandum of understanding which was concerning
11 the legislation.

12 You indicated that Cook County signed it
13 but it shows that it's crossed out.

14 I'm not sure if that's correct or not,
15 and what I'd like to do, if I could reserve it
16 and check with the office, the signature -- the
17 second one, I'm not sure, if that's correct.

18 MS. POLEK: If I could perhaps clarify for the
19 record, Cook County inadvertently signed the
20 wrong memorandum.

21 With the understanding that the first
22 signature was deleted or eradicated, Cook County

1 then signed the other memorandum of
2 understanding.

3 MS. DOSS: Well, your Honor, just so the
4 record --

5 JUDGE O'CONNELL-DIAZ: Ms. Doss, you're going
6 to have to step up to the microphone. I cannot
7 hear you.

8 Ms. O'Brien, if you have a
9 clarification, I wish you would come up so I can
10 hear it.

11 Ms. Doss.

12 MS. DOSS: From my understanding, memorandum
13 of understanding dated March 3rd regarding
14 legislation was not signed by Cook County, and it
15 is on the exhibit crossed out.

16 And I just want the record to reflect
17 that we are not a signatory to that particular
18 memorandum of understanding. I'm not sure how
19 you categorized it.

20 MR. MAC BRIDE: I didn't think I -- can I ask
21 Mr. Crumrine some further questions? I think we
22 can clarify this with the witness.

1 JUDGE O'CONNELL-DIAZ: Mr. Crumrine, can you
2 clarify the inquiry that Ms. Doss has with regard
3 to the exhibit that you referenced, the
4 memorandum of understanding which is attached to
5 what has been marked for identification as IP
6 Exhibit 1.

7 MR. MAC BRIDE: I'm sorry, Judge, so everyone
8 is clear, there are two memoranda of
9 understanding and I think I did have Mr. Crumrine
10 identify each of those that they are -- the two
11 are signed each by Commonwealth Edison but then
12 otherwise by different sets of parties, and I
13 think that's the source of the confusion here.

14 THE WITNESS: Let me clarify.

15 There is what I would characterize as
16 the first document which has a longer list of
17 signatories which is one paragraph long. I'll
18 call it the one-paragraph memorandum.

19 That was originally but apparently
20 incorrectly signed by the Cook County State's
21 Attorney's Office and it indicates that their
22 signature is crossed out on that document.

1 There is a second, multiparagraph
2 document that was signed just by ComEd, Citizens
3 Utility Board, City, and the State's Attorney's
4 Office, and I believe that is the document that
5 was appropriately correctly signed by the State's
6 Attorney's Office.

7 MS. DOSS: Well, would you in your exhibit, if
8 we can like A and B or something to that effect,
9 designate these memorandums.

10 MR. MAC BRIDE: That's fine.

11 JUDGE O'CONNELL-DIAZ: Let's refer to the
12 documents that we have had this discussion about,
13 the memorandum of understanding which is the
14 multiparagraph, that will be noted as Exhibit A
15 and hope this doesn't --

16 MR. MAC BRIDE: It should be Exhibit T would
17 be the next exhibit. If we wanted to call these
18 three documents T, U and V, that would be
19 consistent with the original lettering scheme in
20 the exhibitss.

21 JUDGE O'CONNELL-DIAZ: And the second
22 memoranda of understanding that has apparently

1 got the error with Cook County crossed out would
2 be --

3 MR. MAC BRIDE: Exhibit U.

4 JUDGE O'CONNELL-DIAZ: -- Exhibit U.

5 MR. MAC BRIDE: Then the March 10 amendment,
6 just so everything has a letter, would be Exhibit
7 V.

8 JUDGE O'CONNELL-DIAZ: Exhibit V as in Victor.

9 MR. MAC BRIDE: Victor, yes.

10 MS. DOSS: With that clarification, I have no
11 objection.

12 JUDGE O'CONNELL-DIAZ: Thank you.

13 Counsel, you will make sure that the
14 document that is submitted to the clerk has that
15 proper --

16 MR. MAC BRIDE: I will hand mark those three
17 attachments.

18 JUDGE O'CONNELL-DIAZ: Any objection to this
19 document being admitted into evidence?

20 MR. ROBERTSON: I have a question.

21 JUDGE O'CONNELL-DIAZ: Mr. Robertson.

22 MR. ROBERTSON: Just for the purpose -- is

1 this being admitted for a limited purpose or are
2 we permitted to argue anything we want?

3 JUDGE O'CONNELL-DIAZ: Counsel.

4 MR. MAC BRIDE: Well, my purpose is what I
5 stated.

6 I'm not attempting to restrict
7 Mr. Robertson in anything he wants to do.

8 I mean, if -- I have stated the purpose
9 for which I believe it should be admitted.

10 If the Judge wishes to limit --

11 JUDGE O'CONNELL-DIAZ: -- response to a
12 question by Mr. Robertson of relevance.

13 So are you requesting it to be admitted
14 for a limited purpose or --

15 MR. MAC BRIDE: I'm asking to have it admitted
16 for the purpose I stated previously.

17 I am not proposing to put any
18 limitations on it.

19 MR. ROBERTSON: That's fine. Thank you.

20 JUDGE O'CONNELL-DIAZ: Thank you.

21 Then so the record is clear, IP
22 Exhibit 1 with the numerous attachments is

1 admitted into evidence.

2 (Whereupon, Illinois Power
3 Exhibit No. 1 was admitted
4 into evidence.)

5 MR. MAC BRIDE: I have no further questions.

6 JUDGE O'CONNELL-DIAZ: Mr. Guerra, you look
7 like -- you're not on my list.

8 MR. GUERRA: I submitted time, 15 minutes, but
9 actually I am going to waive it.

10 If I can make a brief statement.

11 JUDGE O'CONNELL-DIAZ: Is there any other
12 cross for this witness?

13 MR. ROBERTSON: I didn't reserve any time, but
14 if the document is in the record, I did have two
15 or three quick questions about it.

16 MR. GIORDANO: I had a few questions. I can
17 go after Mr. Guerra's statement.

18 JUDGE O'CONNELL-DIAZ: Mr. Guerra.

19 MR. GUERRA: On behalf of Midwest Generation,
20 LLC, I would like to state for the record that
21 the process that ComEd is seeking to have the
22 Commission follow in this proceeding is flawed in

1 that it disregards the due process rights of
2 other parties and the integrity of the fact
3 finding process.

4 Midwest is not a signature to the
5 settlement agreement.

6 As Midwest stated in its response to
7 ComEd's motion, nonsigning parties have been
8 given virtually no time to examine the issues,
9 conduct discovery and formulate a position.

10 As such, without waiving any procedural
11 rights in this proceeding, Midwest does not have
12 any cross-examination for Mr. Crumrine today.

13 That's it.

14 MR. BERNET: Your Honor, ComEd would like to
15 respond to Mr. Guerra's statement.

16 With respect to due process, I think the
17 order -- the proposed order and the schedule
18 proposed by ComEd and joint movants hasn't
19 changed the order of the proceeding. The only
20 thing that's changed is the compression of time.

21 And by that we mean the schedule has
22 been compressed. The hearing is taking place

1 three weeks earlier than originally proposed.

2 With respect to -- the time for post
3 hearing briefs was also compressed.

4 With respect to time and the ability to
5 prepare for the hearing, the -- only two
6 parties -- only the AG and the staff have
7 identified any witnesses that they intend to
8 cross.

9 Midwest Gen did not identify any
10 cross-examination time.

11 So while the schedule may have changed,
12 Midwest Gen did not seek to cross any witnesses.
13 If they'd have sought cross-examination and one
14 day of hearing was not enough time, the schedule
15 may have been changed.

16 With respect to the time between the
17 last testimony and the date of the hearing, this
18 is exactly the same amount of time that was
19 proposed or that was in place for the '99 rate
20 case, and one day less than the schedule that was
21 in the first phase of this case.

22 With respect to what has been filed in

1 this case, in this phase, Midwest Gen filed no
2 direct testimony, no rebuttal testimony, and in
3 effect to the extent that they're seeking
4 cross-examination of ComEd witnesses, that
5 testimony has been on file for more than a month.

6 With respect to discovery, as I
7 understand it, Midwest Gen has not served ComEd
8 with any discovery in phase two of this case with
9 the exception of a me too data request.

10 ComEd voluntarily produced all the data
11 requests and responses to the audit back in
12 November.

13 ComEd has also had a data room available
14 since November where all the documents, and I
15 think Liberty said it was 250,000 pages of
16 documents, have been present for review by
17 Midwest Gen and all other parties. And it's my
18 understanding that Midwest Gen has not sought
19 access to that room.

20 So its ComEd's position that no due
21 process rights are being affected by this
22 schedule.

1 MR. GIORDANO: Your Honor, we also have a
2 comment for Trizec Properties.

3 We agree that due process rights are not
4 being affected by this schedule.

5 I think it's very important to note that
6 Midwest Generation presented testimony in phase
7 one in this case and not in phase two and that
8 the issues raised by Midwest Generation in phase
9 one have been addressed by ComEd in their filing
10 Rider ZSS Zero Standards Service.

11 All the issues that have been raised by
12 Midwest Gen have been addressed in that filing
13 that has already been approved by the Commission.

14 And by virtue of that filing, Midwest
15 has been exempted from payment of delivery
16 services charges, rider -- rate RCDS charges that
17 are the subject of this matter.

18 And we think it's inappropriate that
19 Midwest is objecting to the procedural process of
20 this particular proceeding when Midwest's
21 substantive issues have already been addressed by
22 ComEd and they have raised absolutely no issues

1 in the phase two proceeding that's currently
2 before the Commission.

3 MR. GUERRA: I have nothing further.

4 MS. DOSS: I have just got one point.

5 I just want to make a statement on
6 behalf of Cook County that I think Mr. Guerra's
7 objection at this juncture is inappropriate.

8 When we started the hearing we did ask
9 about scheduling. If he had wanted to make his
10 statement at that time, I think it was more
11 appropriate; or if we addressed briefing at the
12 end.

13 Right now we're in the middle of
14 cross-examination. Either Midwest has cross or
15 do not have cross.

16 But to have argument now without hearing
17 from all the parties I think is just
18 inappropriate at this time.

19 MR. GUERRA: Let me just clarify one point.

20 We did have cross-examination today. I
21 submitted my time to Mr. Rippie who was compiling
22 the schedule.

1 In light of the settlement agreement
2 being in the record, I no longer have cross, but
3 I did not -- I did want to state for the record
4 we were not waiving any procedural rights. That
5 was the purpose of my statement.

6 That's all I have.

7 JUDGE O'CONNELL-DIAZ: Thank you.

8 Mr. Giordano.

9 MR. GIORDANO: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY

12 MR. GIORDANO:

13 Q. Good morning, Mr. Crumrine.

14 A. Good morning.

15 Q. I'd like to refer you to ComEd Exhibit
16 113.0, and this is the question and answer on
17 Lines 73 to 85 on Page 4.

18 And you're asked there, aren't you, what
19 issues did the implementation of Rider ZSS --
20 that's ZSS, zero standard service, render moot,
21 correct; isn't that right?

22 A. That's correct.

1 Q. Now I'd like to show you a copy of -- what
2 should we mark these cross exhibits, your Honor?
3 I have a cross exhibit.

4 JUDGE O'CONNELL-DIAZ: Does it need to be
5 marked?

6 MR. GIORDANO: Yes. I don't know what the
7 number is at this point or how you want this
8 handled.

9 JUDGE O'CONNELL-DIAZ: This is your cross
10 exhibit?

11 MR. GIORDANO: Yeah. Is it Trizec --

12 JUDGE O'CONNELL-DIAZ: Do you recall what the
13 last exhibit was?

14 MR. GIORDANO: I don't. Can we provide that?

15 MR. RIPPPIE: It was our practice to start,
16 over the phase two numbering, with numbers
17 beginning with a hundred, so. . .

18 MR. GIORDANO: That would make it a lot
19 easier.

20 MR. RIPPPIE: Start with Trizec 100.

21 JUDGE O'CONNELL-DIAZ: Let the record reflect
22 that counsel has tendered what has been marked as

1 Trizec Exhibit 100.

2 MR. GIORDANO: Trizec Cross 100.

3 JUDGE O'CONNELL-DIAZ: Cross, yeah.

4 (Whereupon, Trizec Cross

5 Exhibit No. 100 was marked

6 for identification.)

7 BY MR. GIORDANO:

8 Q. Mr. Crumrine, I show you what's been

9 marked as Trizec Exhibit Cross 100.

10 This is rider ZSS, zero standards

11 service, applicable to Rate RCDS; is that right?

12 A. Yes, it is.

13 Q. Are you familiar with this document?

14 A. Yes, I am.

15 Q. Is this document currently part of ComEd's

16 tariffs?

17 A. Yes, it is.

18 Q. When was this document filed with the

19 Commission?

20 A. October 31st of 2002.

21 Q. When did it become effective?

22 A. December 15th, 2002.

1 MR. GIORDANO: And how does rider -- I move
2 for the admission of Trizec Cross Exhibit 100.

3 MR. RIPPIE: No objection.

4 MR. GUERRA: I object.

5 Your Honor, I don't see what the
6 relevance of this document is with respect to
7 Trizec Properties' position in this matter.

8 I don't understand why this is being
9 offered at this time.

10 MR. GIORDANO: Trizec Properties' position in
11 this matter is not limited -- all the issues in
12 this case have impact on Trizec Properties, and
13 all -- and all consumers in the ComEd service
14 territory.

15 This -- this -- this Rider ZSS addresses
16 all of Midwest's concerns in this case.

17 Midwest -- don't interrupt.

18 Midwest just raised a procedural due
19 process argument objecting to the process that's
20 been supported by all of the joint movants in
21 this proceeding including the City of Chicago,
22 the Citizens Utility Board, the RES Coalition,

1 the Cook County State's Attorney's office,
2 Commonwealth Edison, Trizec Properties, BOMA, and
3 the RES Coalition.

4 Now, this document is clearly relevant.
5 If you look at ComEd Exhibit 113.0, it states in
6 Mr. Crumrine's testimony, and we're going to get
7 into that on 74 and 75, in phase one of this
8 docket Midwest raised several issues related --
9 relating to station power service and generators
10 as delivery service customers.

11 Specifically Midwest argued for a rate
12 design that would greatly reduce the distribution
13 charges that independent power producers would
14 pay urging, in effect, that IPPs should be exempt
15 from the distribution facilities charge under
16 rate RCDS and Mr. Crumrine goes on and states
17 that implementation of Rider ZSS addresses those
18 issues as you can see on Lines 86 through 100 of
19 his testimony.

20 This is clearly a relevant document in
21 this case and these are the only issues that have
22 been raised by Midwest.

1 This is clearly within Mr. Crumrine's
2 direct testimony which is part of phase two of
3 this proceeding.

4 MR. GUERRA: If I can briefly respond.

5 First of all, I believe Mr. Giordano's
6 statement is total improper.

7 First of all, he is speaking to Midwest
8 Generation's concerns and that all I think -- he
9 said all of our concerns have been settled.
10 That's really not for him to speak as to
11 Midwest's concerns.

12 I would believe that would be an issue
13 for briefing.

14 Second, I believe the testimony he's
15 referring to speaks for itself, and that may have
16 been the topic that we were going to
17 cross-examine Mr. Crumrine on, but I have now
18 waived cross in light of my statement that I made
19 earlier.

20 So there really is no relevance to this
21 document and this whole line of
22 cross-examination.

1 If it's -- if there's an issue regarding
2 due process that let's say Midwest raises in its
3 brief, if it files a brief, then Mr. Giordano can
4 respond in his brief.

5 MR. GIORDANO: This is clearly relevant.

6 If Midwest is willing to waive and
7 withdraw its procedural due process right
8 argument then we will stop this line of
9 cross-examination.

10 This Rider ZSS that's what we're going
11 to -- going into on cross-examination, whether or
12 not Midwest issues have been addressed in this
13 case.

14 That's what we will be cross-examining
15 Mr. Crumrine on, and we need to present -- have
16 this document in the record in order to do that
17 cross-examination.

18 Mr. Guerra, do you want to withdraw your
19 procedural due process complaint or do you
20 want -- do you want to continue with those
21 complaints and then object to cross-examination
22 related to your substantive issues?

1 MR. GUERRA: Am I going to be sworn in here?

2 Again, this is an issue for briefing. I
3 mean, clearly an issue for briefing.

4 And the whole line of cross, I believe,
5 is improper.

6 MR. BERNET: Just for the record, Midwest Gen
7 did not identify any substantive position that
8 will be compromised by this schedule.

9 JUDGE O'CONNELL-DIAZ: Just as you noted,
10 Mr. Giordano, that Trizec has certain concerns in
11 this docket and they encompass many factors, I
12 think Mr. Guerra's recitation with regard to
13 certain issues but obviously they would sit in
14 the same position that you do, that they would
15 have an all-encompassing view of this proceeding.

16 I'm not quite sure what the purpose of
17 you having this marked other than to refute
18 Midwest Generation's comments ten minutes ago.

19 Is there any other purpose?

20 MR. GIORDANO: It's related to the issue
21 raised by Mr. Crumrine of whether or not ZSS has
22 rendered the issues raised by Midwest in this

1 proceeding moot. That's why we believe it's
2 relevant.

3 That's an important -- if the issues
4 that have been raised by Midwest in this
5 proceeding are moot it's -- that's extremely
6 relevant to the issue of Midwest's procedural due
7 process argument.

8 MR. GUERRA: That's an issue for briefs.

9 MR. RIPPKE: Your Honor, I hate to sort of
10 venture in here, but I would point out that this
11 is a tariff on file with the Illinois Commerce
12 Commission.

13 And Mr. Crumrine can answer questions on
14 cross-examination, and I believe the parties are
15 free to cite it in their briefs, irrespective of
16 whether or not it's admitted in a cross exhibit.

17 I do renew my statement that we have no
18 objection to that but...

19 JUDGE O'CONNELL-DIAZ: Mr. Giordano, do you
20 have a lengthy cross-examination?

21 MR. GIORDANO: No, I do not, a very brief
22 cross-examination.

1 JUDGE O'CONNELL-DIAZ: Okay. I'll admit
2 Trizec Cross Exhibit 100.

3 (Whereupon, Trizec Cross
4 Exhibit No. 100 was admitted
5 into evidence.)

6 MR. GIORDANO: Thank you, your Honor.

7 BY MR. GIORDANO:

8 Q. Mr. Crumrine, is it your opinion that the
9 filing of Rider ZSS, zero standards service,
10 renders the issues raised by Midwest in phase one
11 in this docket moot?

12 A. It renders the issues that they raised
13 with regard to the proper charging for station
14 power service and generators and as they are
15 delivery services customers.

16 I believe that's the issue that it
17 renders moot.

18 Q. And isn't that the only issue that was
19 raised by Midwest in phase one of this proceeding
20 to your recollection?

21 A. I'm sorry, I don't recall exactly whether
22 that was the only issue that they raised.

1 Q. Well, let me refer you to Midwest Exhibit
2 1.0, Lines 91 to 93 of -- this is Dr. -- this is
3 John T. Long's revised direct testimony.

4 This is the vice president and chief
5 technical officer of Midwest Generation, LLC.

6 He's asked, please summarize Midwest's
7 rate -- Midwest's rate design proposal in this
8 proceeding.

9 MR. GUERRA: Your Honor, I would object again.
10 I mean, I just think this is improper. Testimony
11 is there and it speaks for itself.

12 If he wants to raise arguments on this
13 point, he can do it in briefing.

14 JUDGE O'CONNELL-DIAZ: I tend to agree with
15 Mr. Guerra, Mr. Giordano.

16 You have it in the record. You want to
17 bring it up in your briefs, fine.

18 Obviously what Mr. Crumrine's opinion is
19 to what the issues that Midwest raises is based
20 on his opinion.

21 I think the record is clear from the
22 first phase of this proceeding and if my

1 recollection serves me properly, there were
2 numerous issues that Midwest raised.

3 So I think the record is clear.

4 MR. GIORDANO: Your Honor, I think I can
5 establish that the issues raised by Midwest in
6 phase one were the issues that were addressed by
7 Rider ZSS, and I can do that in a short period of
8 time.

9 This question is relevant. The issue is
10 Mr. Crumrine raised this in his testimony in this
11 phase of the docket.

12 And the point is that Midwest's rate
13 design issues were addressed prior to phase two
14 in this case.

15 It's important for purposes of a full
16 record that we -- that Mr. Crumrine elaborate a
17 little bit further on that particular issue.

18 JUDGE O'CONNELL-DIAZ: I think he has
19 elaborated enough.

20 He has given us his opinion and you have
21 this marked as an exhibit and I will request that
22 you would move along to your next line of

1 questions for this witness.

2 MR. GIORDANO: Okay. Thank you, your Honor.

3 JUDGE O'CONNELL-DIAZ: I think your point has
4 been made.

5 MR. GIORDANO: Thank you, your Honor. I have
6 nothing further.

7 JUDGE O'CONNELL-DIAZ: Mr. Robertson.

8 MR. ROBERTSON: Thank you.

9 CROSS-EXAMINATION

10 BY

11 MR. ROBERTSON:

12 Q. Good morning, Mr. Crumrine.

13 A. Good morning, Mr. Robertson.

14 Q. We run into each other a lot lately.

15 A. Something tells me we'll run into each
16 other again today.

17 Q. I think so.

18 Just a couple points of clarification,
19 if I may.

20 The agreement that's IP's Exhibit
21 No. 1 in this proceeding is not signed by all the
22 parties in this case; is that correct?

1 A. That's correct.

2 Q. And, in fact, it's signed by some parties
3 who aren't in this case or any other cases that
4 are referenced in the document; isn't that true?

5 A. There's probably one or two parties that
6 fall in that category, yes.

7 Q. Has Illinois Power placed any exhibits
8 into the record in this case up until now to the
9 best of your knowledge?

10 A. I'm not absolutely certain but I don't
11 believe so.

12 Q. Lastly, the agreement that's in the record
13 as IP Exhibit No. 1 is a document that is
14 intended to be a single package.

15 In other words, in order for the purpose
16 of the document being accomplished and everything
17 that's described in the document must be
18 accomplished or it does not take effect; is that
19 correct?

20 MR. RIPPIE: I object to the question. Asks
21 the witness to reach a legal conclusion about a
22 very complex legal document.

1 He's authenticated it. He's done
2 nothing more.

3 MR. ROBERTSON: The document will speak for
4 itself. Thank you.

5 JUDGE O'CONNELL-DIAZ: Thank you,
6 Mr. Robertson.

7 JUDGE O'CONNELL-DIAZ: Any other cross for Mr.
8 Crumrine?

9 Mr. Crumrine, thank you for your
10 testimony. You're excused.

11 I believe I have admitted the various
12 testimonies of Mr. Crumrine into the record.

13 I believe our next witness is
14 Mr. Hill?

15 On the schedule that I have, ComEd had
16 30 minutes for the Liberty --

17 MR. RIPPIE: That has been waived.

18 JUDGE O'CONNELL-DIAZ: All right.

19 (Witness sworn.)

20

21

22

1 JEROME P. HILL,
2 having been called as a witness herein, after
3 having been first duly sworn, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY

7 MR. RATNASWAMY:

8 Q. Mr. Hill, would you please state your name
9 for the record.

10 A. My name is Jerome P hill.

11 Q. What is your business address, sir.

12 A. 3 Lincoln Center, Oakbrook Terrace,
13 Illinois.

14 Q. By whom are you employed?

15 A. ComEd.

16 Q. What capacity are you employed by ComEd?

17 A. Director of revenue requirements.

18 Q. In phase two of this proceeding, did you
19 prepare or have prepared under your direction and
20 control the phase two direct testimony of Jerome
21 P. Hill ComEd Exhibit 112.0 and attachments
22 thereto; the -- the phase two rebuttal testimony

1 of Jerome P. Hill, ComEd Exhibit 120.0 and
2 attachments thereto; the phase two supplemental
3 rebuttal testimony of Jerome P. Hill, ComEd
4 Exhibit 114.0 and attachments thereto; and the
5 phase two reply testimony of Jerome P. Hill,
6 ComEd Exhibit 126.0 and attachments thereto?

7 A. Yes to all.

8 Q. If I were to ask you the questions
9 presented in those four documents with the
10 respective attachments, would you provide the
11 same answers that are set forth therein?

12 A. Yes, I would.

13 MR. RATNASWAMY: All right, your Honor,
14 subject to cross-examination, I would offer into
15 evidence ComEd Exhibit 112.0 and attachments
16 thereto; ComEd Exhibit 120.0 and attachments
17 thereto; ComEd Exhibit 114.0 and attachments
18 thereto; and ComEd Exhibit 126.0 and attachment
19 thereto.

20 JUDGE O'CONNELL-DIAZ: Any objections subject
21 to cross-examination of those documents being
22 admitted?

1 There being no objection, let the record
2 reflect that those documents are admitted.

3 (Whereupon, ComEd
4 Exhibits 112.0, 120.0, 114.0 and
5 126.0 were admitted into
6 evidence subject to
7 cross-examination.)

8 MR. RATNASWAMY: Mr. Hill is ready for
9 cross-examination.

10 JUDGE O'CONNELL-DIAZ: Mr. Kaminski.

11 MR. KAMINSKI: Thank you.

12 CROSS-EXAMINATION

13 BY

14 MR. KAMINSKI:

15 Q. Good morning, Mr. Hill.

16 A. Good morning.

17 Q. Would you please refer to your phase two
18 direct testimony, Exhibit 112 at Page 22.

19 A. I have it.

20 Q. On Lines 40 -- sorry, 482 to 499.

21 In your testimony do you agree with the
22 downward adjustment to rate base for the Antioch

1 project recommended by Liberty but reduce the
2 adjustment from 2,088,324 to 1,820,670?

3 A. My direct testimony says that, yes.

4 Q. Please refer to Exhibit 112.1 and
5 attachment to your direct Page 12 of 14.

6 A. I have it.

7 Q. Looking at the column labeled BB Excess
8 AFUDC on Antioch project on Line 1 distribution
9 plant, is that where the 1,820,670 on Page 22 of
10 your direct is reflected in the exhibits?

11 A. Yes.

12 Q. Could you please look at your supplemental
13 rebuttal testimony, Exhibit 114 and the
14 attachment thereto, .1.

15 A. What page? I'm sorry.

16 Q. No page.

17 A. I'm sorry. Yes, I have it.

18 Q. Can you show me where the downward
19 adjustment that was -- that you just agreed was
20 in the Exhibit 112.1 is in 114.1?

21 A. It is not in the construction of revenue
22 requirement in ComEd Exhibit 114.1.

1 Q. Thank you.

2 Could you now please refer back to

3 Exhibit 112 in your direct testimony in phase

4 two, Page 41?

5 A. I have it.

6 Q. On Lines 922 to 924, you state that you

7 are not opposing Liberty's adjustment for reduced

8 CSR coverage?

9 A. I say that in my phase two direct

10 testimony, yes.

11 Q. Is this adjustment for 960,000?

12 A. 960,000, yes.

13 Q. For the record can you indicate where you

14 confirm that number?

15 A. It is ComEd Exhibit 112.2, Schedule 16.

16 Q. Thank you. Now, this reduced CSR

17 coverage, would you categorize that as a

18 customer-related expense?

19 A. I believe that's where we record it, yes.

20 Q. Thank you. Could you refer to Page 42 of

21 your direct.

22 A. I have it.

1 Q. Refer specifically to Lines 936 to 938.
2 You state that you are not opposing Liberty's
3 adjustment to reduced handoffs of SLAs.
4 A. Again, for the revenue requirement in my
5 direct testimony, that is correct.
6 Q. Is this adjustment for \$440,000 -- you
7 should be able to confirm that in Schedule 19 --
8 I'm sorry, that would be 112.2, Schedule 19.
9 A. 19, that's correct. You say 440,000, yes.
10 Q. Thank you.
11 Were these also customer-related
12 expenses?
13 A. Yes, I believe so.
14 Q. Okay. Please refer to Page 45 of your
15 direct, lines 1007 through 1010.
16 A. I'm sorry, I either have the wrong page or
17 the wrong reference.
18 Say again, please. Page 45.
19 Q. Page 45.
20 A. Lines?
21 Q. 1007.
22 A. Okay. Thank you.

1 Q. Through 100 -- I'm sorry, 1010.

2 A. Okay. I'm with you now.

3 Q. Okay. Do you state that you are not

4 opposing Liberty's adjustment for the elimination

5 of billing contractor overtime?

6 A. For the revenue requirement determination

7 in my direct testimony, yes, that is correct.

8 Q. And is this adjustment for \$1,700,000?

9 A. Yes, it is.

10 Q. And were these customer-related expenses?

11 A. Yes, I believe so.

12 Q. Referring to the next page, Page 46, Lines

13 1012 to 1015, do you state that you are not

14 opposing Liberty's adjustment for prioritized

15 second meter reading?

16 A. Yes, again, with the same caveat, for

17 purposes of my direct testimony revenue

18 requirements in that testimony, yes, that is

19 true.

20 Q. And is this adjustment for \$720,000?

21 A. Yes, it is.

22 Q. Were these customer-related expenses?

1 A. I believe they're recorded there, yes.

2 Q. Please refer to Page 47 through to 48,
3 Lines 1036 through 1065.

4 Do you address Liberty's adjustments for
5 risk scoring?

6 A. Do I address it, yes, I do.

7 Q. Do you state that you are not opposing
8 Liberty's adjustments subject to certain
9 modifications, subject to including a certain
10 related capital costs in rate base?

11 A. Yes, I do.

12 Q. And with these modifications, is the
13 adjustment to these expenses for -- in the amount
14 of \$1,270,000?

15 A. You say \$1,270,000, is that what you said?

16 Q. That was my question, yes.

17 A. On ComEd Exhibit 112.2, Schedule 23, the
18 customer service expense adjustment amount as
19 modified is 1,270,000.

20 Q. Thank you. Were these customer-related
21 expenses?

22 A. Yes.

1 Q. Refer to Page 48 and 49 of your direct,
2 Lines 1066 through 1087.

3 Do you address Liberty's adjustment for
4 the elimination of agent compensation?

5 A. Yes, I do.

6 Q. And do you state that you are not opposing
7 Liberty's adjustment subject to certain
8 modifications?

9 A. That is correct. Again, direct testimony,
10 yes.

11 Q. With these modifications, the adjustment
12 was \$830,000?

13 A. That is correct.

14 Q. And these were customer-related expenses?

15 A. Yes.

16 Q. Would you agree subject to check that in
17 these pages you have agreed to adjustments to
18 customer-related expenses specifically in account
19 903 of \$5,920,000?

20 MR. RATNASWAMY: Is that the sum of everything
21 you just crossed him about?

22 MR. KAMINSKI: Yes.

1 THE WITNESS: I'll agree that your math is
2 correct. Yes.

3 BY MR. KAMINSKI:

4 Q. Thank you. Now move to your rebuttal
5 testimony, Exhibit 120.

6 A. I have it.

7 Q. Please refer to Page 9.

8 A. I have it.

9 Q. Line 187 through to Page 10, Line 220.

10 (Change of reporters.)

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1 (Change of reporters.)

2 BY MR. KAMINSKI:

3 Q. On Page 10, we find the same Liberty
4 proposed customer-related adjustments just
5 discussed, correct? There's a list on Page 10?

6 A. It's some of the ones we spoke about. Not
7 all of them, yes. This list is larger than the
8 list we just went through.

9 Q. But all of them we discussed before are in
10 this list, CSR coverage?

11 A. They appear to be, yes.

12 Q. Call center SLAs?

13 A. Yes.

14 Q. Prioritized second meter readings?

15 A. Yes.

16 Q. Risk scoring?

17 A. Yes.

18 Q. Eliminated agent compensation?

19 A. Yes.

20 Q. On Page 9 and 10 you assert that all the
21 auditor adjustments listed on Page 10 are outside
22 the scope of the audit, correct?

1 A. That's the position I gave in rebuttal,
2 yes.

3 Q. But you further go on to say in Lines 218
4 through 220 on Page 10 that, however, comma, that
5 ComEd's revised proposed jurisdictional revenue
6 requirement does not reject any of Liberty's
7 proposed adjustments based on the scope of the
8 audit, correct?

9 A. That's what it says, yes.

10 Q. Now, please move to your reply testimony,
11 Exhibit 126.

12 A. Could I have just one minute please.
13 126?

14 Q. Yes.

15 A. I am there.

16 Q. On Page 21 starting on Line 490 you assert
17 that Liberty's customer-related adjustments
18 listed on Page 10 of your Exhibit 120 that we
19 just discussed should be rejected as outside the
20 scope of the audit, correct?

21 A. I do.

22 Q. Exhibit 120 is your rebuttal testimony

1 filed on February 28th before the agreement was
2 signed, correct?

3 A. I don't know what date the agreement was
4 signed.

5 Q. You were not in the room?

6 A. No, sir.

7 Q. These adjustments are the same adjustments
8 we discussed earlier in Exhibit 120, correct?

9 A. That is correct.

10 Q. So you assert in your reply testimony,
11 120, that the Commission should reject these
12 adjustments as outside the scope of the
13 agreement, correct?

14 A. That's my final position on these, given
15 all the testimonies that were filed up to that
16 point.

17 Q. However, in your rebuttal testimony you
18 assert that ComEd does not reject any Liberty
19 proposed adjustments even though you assert that
20 the adjustments are outside the scope of the
21 audit?

22 A. That's correct because the consistency

1 argument --

2 Q. I didn't ask for an explanation. Yes or
3 no please.

4 A. Yes.

5 Q. Thank you.

6 So in both your rebuttal testimony,
7 Exhibit 120, and your reply testimony, 126, you
8 assert that the customer-related adjustments are
9 outside the scope of the audit, correct?

10 A. Yes.

11 Q. So why are these adjustments a problem now
12 for being outside of the audit when these
13 adjustments were not a problem on February 28,
14 2000, despite being outside of the audit?

15 A. For purposes of revenue -- of developing
16 revenue requirements, the Company takes the
17 position that it remains consistent in its
18 application of various principles, policies,
19 standards, applications, what have you.

20 In the rebuttal testimony, the
21 depreciation rate adjustment of Liberty was
22 opposed by Mr. Efron and also I think also staff

1 because it considered that depreciation rate
2 change to be outside the scope of the audit.

3 Consistency in developing revenue
4 requirements then required me to take a look at
5 what other Liberty audit adjustments might also
6 fall under that same standard, and these
7 particular customer service adjustments which I
8 indicate in my rebuttal testimony which, by the
9 way, in my rebuttal testimony we, ComEd, revenue
10 requirements still adopt the depreciation rate
11 adjustments, therefore, we were also adopting the
12 customer service.

13 It didn't change my opinion that in the
14 context of the argument made by GCI and staff the
15 depreciation rate was not a remedial or was not
16 remedial and, therefore, should not be included
17 in the Liberty adjustments.

18 Q. Did your argument that you just
19 articulated regarding your rebuttal testimony
20 change in any way between your rebuttal testimony
21 and your reply testimony?

22 A. Yes. We did not adopt the depreciation

1 rate adjustment in the reply testimony,
2 therefore, consistency at that point said I am
3 going to eliminate those items that fall under
4 this standard as out of scope. I adopted the
5 standard used by GCI --

6 Q. Did you not just agree --

7 JUDGE O'CONNELL-DIAZ: Mr. Kaminski, let the
8 witness answer the question.

9 THE WITNESS: I think it is very important to
10 note that it is -- the rebuttal to the reply are
11 two very different revenue requirement proposals.

12 One says that -- the rebuttal says that
13 we did not hold that depreciation rate was out of
14 scope or remedial and we didn't think that
15 customer service adjustments that we've been
16 talking about were out of scope or not remedial.

17 Upon reading the testimonies of the ICC
18 witnesses and GCI and adopting their standard,
19 the reply testimony is a very separate revenue
20 requirement determination which now that standard
21 I'm applying to the depreciation rate and the
22 customer service adjustments.

1 So is the revenue requirement
2 development in both rebuttal and reply
3 consistent? Yes, they are.

4 Are they consistent in that they apply
5 similar standards to items? Yes, they are.

6 Did the standard change in my
7 development of the revenue requirement between
8 rebuttal and apply? Yes, it did.

9 Q. So despite stating in both your rebuttal
10 testimony and your reply testimony that these
11 adjustments that we've been discussing are
12 outside the scope of the audit and they were in
13 proposed revenue requirements in -- they were not
14 challenged in the proposed revenue requirement
15 reply testimony but were rejected in your reply
16 testimony, you say that your view of them has
17 changed?

18 A. I read the rebuttal testimonies of all the
19 witnesses, and if I can be convinced that that's
20 a standard that maybe I ought to adopt, then I
21 will adopt it. Then that's what I present in my
22 reply testimony. I adopted the standard of the

1 GCI witness and the staff witness.

2 Q. So you adopted the standard that you
3 discussed in your rebuttal testimony in your
4 reply testimony?

5 A. I pointed out the standard within my
6 rebuttal testimony. I applied it in the reply.

7 Q. So you applied -- you applied the standard
8 in the rebuttal testimony but said -- you
9 argued -- you assert that in your rebuttal
10 testimony, these things are outside of the audit.
11 These are things -- these specific items are
12 outside the scope of the audit but we're not
13 going to change the revenue requirement to
14 reflect that, but in your reply, you state these
15 same items are outside the scope of the audit and
16 we are going to remove them from the revenue
17 requirement, right?

18 A. I adopted that in my reply testimony,
19 identified them in rebuttal. I identified them
20 in rebuttal, and I took them out in reply.

21 Q. Isn't it your decision to merely identify
22 them in your rebuttal --

1 JUDGE O'CONNEL-DIAZ: I am going to stop you
2 right here. I think he's answered the question
3 that you have.

4 If you have a different question, you
5 can move forward that with, but I think you have
6 had the question answered four times now.

7 BY MR. KAMINSKI:

8 Q. Isn't it true that the Commission directed
9 an audit to be performed in order to determine
10 whether and to what degree the remedial
11 activities across the entire ComEd transmission
12 and distribution systems identified in several
13 reports impact the revenue requirement issue in
14 this case?

15 A. That's my general understanding of what
16 the audit was to be, yes.

17 Q. Isn't it also true that ComEd agreed to
18 this audit?

19 A. I assume it did. I don't know. I don't
20 know. I don't know that I can answer that. I
21 don't know -- when you say "do we agree to it,"
22 agree can mean a lot of different things.

1 Q. Would it be helpful if I pointed you to
2 the order in 01-0664?

3 A. Do we agree that the audit would be
4 conducted? I suppose we did. But --

5 Q. Would you --

6 A. Conducting the audit did we agree to it,
7 yes, I believe so.

8 Q. And we are now in the second phase of this
9 case, would be the results of that audit,
10 correct?

11 A. Yes, sir.

12 Q. The schedules attached to your
13 supplemental rebuttal testimony which are
14 identified as 114.1 reflect the rate base that
15 ComEd urges the Commission to find just and
16 reasonable, correct?

17 A. 114.1 addresses the rate base that ComEd
18 and other joint movements (sic) recommend the
19 Commission consider in resolving this case.

20 Q. I'm sorry. Did you say movements or --
21 you mean movants?

22 A. Movants. I am sorry if I misspoke.

1 Q. Are you familiar with the total amount of
2 rate base that the Liberty audit report
3 recommends be disallowed in this case?

4 A. Yes. I have general recollection of that,
5 yes.

6 Q. What is that recollection?

7 A. I believe incremental to the interim
8 order, the number was somewhere around 110
9 million, somewhere around there.

10 Q. Can you tell us how much of Liberty's
11 recommended rate base disallowances were adopted
12 by the schedules attached to your supplemental
13 rebuttal testimony?

14 A. Yes. I believe on ComEd Exhibit 114.1,
15 Page 12, Columns AA through EE and ComEd Exhibit
16 114.1 Page 13, Columns HH, II and KK.

17 Q. Could you answer the question, though, how
18 much of that rate base disallowances were
19 adopted?

20 A. Some are disallowances, and some are
21 add-backs. They are all Liberty adjustments, but
22 they go either way.

1 Q. I am merely asking: Of the disallowances
2 that you refer to -- you refer to in the last
3 question, how many of those were adopted by the
4 Schedule 114.1?

5 A. Mr. Kaminski, I'm not trying to evade the
6 question. I am just trying to make sure I
7 understand when you use the term "disallowance."
8 Do you mean adjustments or just the adjustments
9 that would have been subtractions to rate base?

10 Q. Only those adjustments that would reduce
11 the rate base.

12 A. Only those adjustments that would reduce
13 the rate base. Okay.

14 Again, actually there is four
15 reductions, but two have an offsetting
16 depreciation. So, again, citing the same ComEd
17 exhibit, 114.1, Page 12, Column BB is a \$2.4
18 million reduction to rate base from the Liberty
19 audit. Column CC is a 900,000 dollar reduction
20 to rate base from the Liberty audit. And Columns
21 DD and EE are \$252 million reductions to rate
22 base.

1 And then on ComEd Exhibit 114.1, Page
2 13, there's an offsetting depreciation effect of
3 254 million.

4 Q. I'm sorry. Did you say 254 million?

5 A. 254 million.

6 I'm sorry. That is Page 13 of Exhibit
7 114.1 Column HH.

8 Q. Going back to Page 12, DD and EE, that was
9 252 million, correct, put together roughly?

10 A. Yes. It rounds to 252 million, correct.

11 Q. So if you were to add all that together
12 \$1.3 million --

13 A. \$1.3 million net reduction?

14 Q. Yes.

15 A. It looks about right, yes.

16 Q. So it's Com Ed's position that of the
17 original 110 million, your rate base
18 disallowances recommended by the auditors, only
19 1.3 million should be adopted by the Commission?

20 A. I think it's ComEd's and the joint
21 movants' position.

22 MR. KAMINSKI: Thank you. That is all.

1 JUDGE O'CONNEL-DIAZ: Staff, do you have cross
2 of Mr. Hill?

3 MR. REVETHIS: No, your Honor.

4 JUDGE O'CONNEL-DIAZ: Does any other party
5 have any cross for Mr. Hill?

6 MR. GIORDANO: Yeah. I have one question.

7 CROSS EXAMINATION

8 BY

9 MR. GIORDANO:

10 Q. Hi, Mr. Hill.

11 A. Morning.

12 Q. Mr. Hill, do you know whether or not
13 the -- when ComEd announced settle agreement what
14 the effect on Exelon Corporation's earning per
15 share was announced by Exelon Corporation on that
16 day?

17 A. I'm sorry. I do not.

18 Q. Do you know if it went -- if it was a
19 reduction in net income or an increase in net
20 income?

21 A. I really don't know. Mr. Giordano, I
22 don't know.

1 MR. GIORDANO: Thank you. I have nothing
2 further.

3 JUDGE O'CONNEL-DIAZ: Any redirect?

4 MR. RATNASWAMY: Can I have a moment please?

5 No redirect, your Honor.

6 JUDGE O'CONNEL-DIAZ: Thank you, Mr. Hill.
7 You are excused.

8 MR. RIPPPIE: Your Honor, that concludes the
9 Company's submission of evidence.

10 JUDGE O'CONNEL-DIAZ: There is no other cross
11 for any other of the testimony that's been
12 proffered here today?

13 Okay. At this juncture, I would like
14 for us to revisit the schedules that they spoke
15 about earlier this morning.

16 Could staff please clarify for me what
17 schedule they are of a mind to recommend?

18 MR. REVETHIS: Yes, your Honor. We had
19 indicated, given the circumstances, that the
20 staff thought it would be appropriate that we
21 move directly to proposed order on the 19th,
22 Wednesday, and exceptions to the proposed order

1 would be due Friday the 21st and replies to
2 exceptions on 3-25, and hopefully a revised
3 proposed order would go to the Commission on
4 3-26, giving them one additional day.

5 That will allow for any ComEd schedule.

6 JUDGE O'CONNEL-DIAZ: Mr. Kaminski, it's my
7 understanding that GCI's position or I should say
8 AIG's position -- that your recommendation would
9 be to adhere to the schedule that was proposed by
10 the joint movants on March 11th; is that correct,
11 which calls for hearings on March 17th, a
12 proposed order issued on March 18th; March 21
13 would be exceptions to the proposed order; March
14 24 at 12:00 noon replies to exceptions; March
15 26th, the administrative law judge's revised
16 proposed order, and March 28th, the Commission --
17 meet before the Commission.

18 MR. KAMINSKI: Our position is that the
19 proposed schedule as offered in the response
20 filed by ComEd is -- should be rejected. Beyond
21 that, the only other schedule we had at that time
22 was that we would fall back to the March 11th.

1 We have no position regarding whether
2 the Commission should follow the March 11th or
3 that proposed by staff.

4 JUDGE O'CONNEL-DIAZ: But you are in
5 opposition to the schedule asset forth in the
6 response that was filed Friday by the Company or
7 the joint movants, correct?

8 MR. KAMINSKI: Yes, by virtue of the fact that
9 two days for brief is insufficient and
10 unreasonable.

11 JUDGE O'CONNEL-DIAZ: Any other party have --
12 wish to submit a proposed schedule?

13 At this juncture in accordance with the
14 Commission's directive -- Mr. Fein?

15 MR. FEIN: Just a housekeeping matter, Judge,
16 before you mark the record.

17 JUDGE O'CONNEL-DIAZ: I am not marking the
18 record heard and taken.

19 MR. FINE: Okay. Can I make a housekeeping
20 statement in the record?

21 The date escapes me right now, but I
22 believe Enron Energy Services filed a motion to

1 withdraw from the proceeding --

2 JUDGE O'CONNEL-DIAZ: Correct.

3 MR. FINE: -- some time ago.

4 I don't recall if that was ever granted,
5 and I have seen references to them as a party to
6 this case in various filings. So I just wanted
7 to clarify for the record that they filed a
8 notice of withdrawal and I would be happy to
9 follow up with your honor with the exact date,
10 but I do not believe that was ever granted by
11 your Honor.

12 Second, in this proceeding Constellation
13 NewEnergy, Blackhawk Energy Services LLC and
14 Enron Energy Services, Inc., had participated as
15 the ARES Coalition. The ARES coalition is listed
16 as the signatory to the memorandum of
17 understanding of various other documents that
18 were contained in the Illinois Power exhibit that
19 was admitted today.

20 I just want to note for the record that
21 Blackhawk Energy Services LLC is not an
22 individual signator to any of those agreements.

1 Thank you.

2 JUDGE O'CONNEL-DIAZ: I will check on that. I
3 was under the impression that that notice to
4 withdraw had been granted, but I will have to
5 check.

6 Anything else?

7 MS. POLEK: Your Honor. Midwest Generation
8 filed a response to ComEd's motion, and the
9 response asks for alternative relief. It asks
10 that the motion be denied or that in the
11 alternative that there be evidentiary hearings
12 that the testimony proffered be admitted and that
13 the agreement be entered into the record.

14 And it just seems to me I would like to
15 state for the record that the alternative relief
16 that Midwest Gen requested in that response have
17 effectively been given to it already.

18 JUDGE O'CONNEL-DIAZ: And your point?

19 MS. POLEK: That that should hopefully satisfy
20 Midwest Generation with respect to the relief
21 that it requested in the response.

22 JUDGE O'CONNEL-DIAZ: Counsel made their

1 statement today, and that will be on the record,
2 and I too read that response, and the response is
3 what the response is.

4 It's certainly up to Midwest to
5 determine what their position is and not the
6 Company.

7 MS. POLEK: Absolutely.

8 JUDGE O'CONNEL-DIAZ: Okay. At this juncture,
9 I am not going to mark the record heard and taken
10 in accordance with the directive of the
11 Commission. I will report back to the Commission
12 tomorrow as per their instructions at the bench
13 session last week.

14 I will advise them as to the various
15 schedules that have been put before me with
16 regard to the furtherance of this proceeding.

17 So at this point in time, I will
18 continue this matter generally and take it to the
19 Commission. Thank you, everyone.

20 (Whereupon, the hearing in the
21 above matter was continued
22 generally.)